

is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA or its successor agency under Public Law 103-354 should release for operating expenses and whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA or its successor agency under Public Law 103-354 and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When

deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

[56 FR 15829, Apr. 18, 1991]

EXHIBIT F TO SUBPART A OF PART 1962
[RESERVED]

PART 1965—REAL PROPERTY

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989, 42 U.S.C. 1480.

Subparts A-E [Reserved]

PART 1980—GENERAL

Subparts A-C [Reserved]

Subpart D—Rural Housing Loans

Sec.

- 1980.301 Introduction.
- 1980.302 Definitions and abbreviations.
- 1980.303–1980.307 [Reserved]
- 1980.308 Full faith and credit.
- 1980.309 Lender participation in guaranteed RH loans.
- 1980.310 Loan purposes.
- 1980.311 Loan limitations and special provisions.
- 1980.312 Rural area designation.
- 1980.313 Site and building requirements.
- 1980.314 Loans on leasehold interests.
- 1980.315 Escrow accounts for exterior development.
- 1980.316 Environmental requirements.
- 1980.317 Equal opportunity and non-discrimination requirements in use, occupancy, rental, or sale of housing.
- 1980.318 Flood or mudslide hazard area precautions.
- 1980.319 Other Federal, State, and local requirements.
- 1980.320 Interest rate.
- 1980.321 Terms of loan repayment.
- 1980.322 Loan guarantee limits.
- 1980.323 Guarantee fee.
- 1980.324 Charges and fees by Lender.
- 1980.325 Transactions which will not be guaranteed.
- 1980.326–1980.329 [Reserved]
- 1980.330 Applicant equity requirements.
- 1980.331 Collateral.
- 1980.332 [Reserved]
- 1980.333 Promissory notes and security instruments.
- 1980.334 Appraisal of property serving as collateral.

Pt. 1980

7 CFR Ch. XVIII (1–1–09 Edition)

1980.335–1980.339 [Reserved]
1980.340 Acquisition, construction, and development.
1980.341 Inspections of construction and compliance reviews.
1980.342–1980.344 [Reserved]
1980.345 Applicant eligibility requirements for a guaranteed loan.
1980.346 Other eligibility criteria.
1980.347 Annual income.
1980.348 Adjusted annual income.
1980.349–1980.350 [Reserved]
1980.351 Requests for reservation of funds.
1980.352 [Reserved]
1980.353 Filing and processing applications.
1980.354 [Reserved]
1980.355 Review of requirements.
1980.356–1980.359 [Reserved]
1980.360 Conditions precedent to issuance of the loan note guarantee.
1980.361 Issuance of loan note guarantee.
1980.362 [Reserved]
1980.363 Review of loan closing.
1980.364–1980.365 [Reserved]
1980.366 Transfer and assumption.
1980.367 Unauthorized sale or transfer of the property.
1980.368–1980.369 [Reserved]
1980.370 Loan servicing.
1980.371 Defaults by the borrower.
1980.372 Protective advances.
1980.373 [Reserved]
1980.374 Liquidation.
1980.375 Reinstatement of the borrower's account.
1980.376 Loss payments.
1980.377 Future recovery.
1980.378–1980.389 [Reserved]
1980.390 Interest assistance.
1980.391 Equity sharing.
1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.
1980.393–1980.396 [Reserved]
1980.397 Exception authority.
1980.398 Unauthorized assistance and other deficiencies.
1980.399 Appeals.
1980.400 [Reserved]

Subpart E—Business and Industrial Loan Program

1980.401 Introduction.
1980.402 Definitions.
1980.403 Citizenship of borrowers.
1980.404 [Reserved]
1980.405 Rural areas.
1980.406–1980.410 [Reserved]
1980.411 Loan purposes.
1980.412 Ineligible loan purposes.
1980.413 Transactions which will not be guaranteed.
1980.414 Fees and charges by lender and others.
1980.415–1980.418 [Reserved]
1980.419 Eligible lenders.
1980.420 Loan guarantee limits.

1980.421–1980.422 [Reserved]
1980.423 Interest rates.
1980.424 Term of loan repayment.
1980.425 Availability of credit from other sources.
1980.426–1980.431 [Reserved]
1980.432 Environmental requirements.
1980.433 Flood or mudslide hazard area precautions.
1980.434 Equal opportunity and non-discrimination requirements.
1980.435–1980.440 [Reserved]
1980.441 Borrower equity requirements.
1980.442 Feasibility studies.
1980.443 Collateral, personal and corporate guarantees, and other requirements.
1980.444 Appraisal of property serving as collateral.
1980.445 Periodic financial statements and audits.
1980.446–1980.450 [Reserved]
1980.451 Filing and processing applications.
1980.452 FmHA or its successor agency under Public Law 103–354 evaluation of application.
1980.453 Review of requirements.
1980.454 Conditions precedent to issuance of the Loan Note Guarantee.
1980.455–1980.468 [Reserved]
1980.469 Loan servicing.
1980.470 Defaults by borrower.
1980.471 Liquidation.
1980.472 Protective advances.
1980.473 Additional loans or advances.
1980.474 [Reserved]
1980.475 Bankruptcy.
1980.476 Transfer and assumptions.
1980.477–1980.480 [Reserved]
1980.481 Insured loans.
1980.482–1980.487 [Reserved]
1980.488 Guaranteed industrial development bond issues.
1980.489 [Reserved]
1980.490 Business and industry buydown loans.
1980.491–1980.494 [Reserved]
1980.495 FmHA or its successor agency under Public Law 103–354 forms and guides.
1980.496 Exception authority.
1980.497 General administrative.
1980.498 Business and Industry Disaster Loans.
1980.499 [Reserved]
1980.500 OMB control number.
APPENDIX A TO SUBPART E—FORM FMHA 449–1, APPLICATION FOR LOAN AND GUARANTEE
APPENDIX B TO SUBPART E—CERTIFICATE OF INCUMBENCY AND SIGNATURE
APPENDIX C TO SUBPART E—GUIDELINES FOR LOAN GUARANTEES FOR ALCOHOL FUEL PRODUCTION FACILITIES
APPENDIX D TO SUBPART E—ALCOHOL PRODUCTION FACILITIES PLANNING, PERFORMING, DEVELOPMENT AND PROJECT CONTROL

RHS, RBS, RUS, FSA, USDA

§ 1980.302

APPENDIX E TO SUBPART E—ENVIRONMENTAL ASSESSMENT GUIDELINES
APPENDIX F TO SUBPART E—CONDITIONAL COMMITMENT FOR GUARANTEE
APPENDIX G TO SUBPART E [RESERVED]
APPENDIX H TO SUBPART E—SUGGESTED FORMAT FOR THE OPINION OF THE LENDER'S LEGAL COUNSEL
APPENDIX I TO SUBPART E—INSTRUCTIONS FOR LOAN GUARANTEES FOR DROUGHT AND DISASTER RELIEF
APPENDIX J TO SUBPART E [RESERVED]
APPENDIX K TO SUBPART E—REGULATIONS FOR LOAN GUARANTEES FOR DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISES
EXHIBIT G TO SUBPART E [NOTE]

Subparts F–I [Reserved]

AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.
Subpart E also issued under 7 U.S.C. 1932(a).

Subparts A–C [Reserved]

Subpart D—Rural Housing Loans

SOURCE: 60 FR 26985, May 22, 1995, unless otherwise noted.

§ 1980.301 Introduction.

(a) *Policy.* This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Rural Housing Service (RHS) and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, holding or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHS employees, members of their families, known close relatives, or business or close personal associates is subject to the provisions of subpart D of part 1900. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

(b) *Program objective.* The basic objective of the guaranteed RH loan program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which otherwise would not be made without a guarantee. Guarantees issued under this subpart are limited to loans to applicants with incomes that

do not exceed income limits as provided in exhibit C of FmHA Instruction 1980–D (available in any RHS office).

(c) [Reserved]

(d) *Nondiscrimination.* Loan guarantees and services provided under this subpart are subject to various civil rights statutes. Assistance shall not be denied to any person or applicant based on race, sex, national origin, color, familial status, religion, age, or physical or mental disability (the applicant must possess the capacity to enter into a legal contract for services). The Consumer Protection Act provides that the applicant may not be denied assistance based on receipt of income from public assistance or because the applicant has, in good faith, exercised any right provided under the Act.

§ 1980.302 Definitions and abbreviations.

(a) The following definitions are applicable to RH loans:

Agency: Rural Housing Service (RHS).

Applicant. The party applying to a Lender for a loan.

Approval official. An RHS employee with delegated loan approval authority under subpart A of part 1901 consistent with the amount and type of loan considered.

Borrower. Collectively, all parties who applied for and received a specific guaranteed loan from an eligible Lender.

Coapplicant. An adult member of the household who joins the applicant in applying to a lender for a loan.

Conditional commitment. RHS's notice to the Lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in the notice.

Development standard. The current edition of any of the model building, plumbing, mechanical, and electrical codes listed in exhibit E to subpart A of part 1924 applicable to single family residential construction or other similar codes adopted by RHS for use in the state.

Disabled person. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death

or which has lasted or is expected to last for a continuous period of not less than 12 months. The disability is expected to be of long or indefinite duration; substantially impede the person's ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

- (1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;
- (2) Is manifested before the person attains age 22;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in one or more of the following areas of major life activity:
 - (i) Self-care,
 - (ii) Receptive and expressive language,
 - (iii) Learning,
 - (iv) Mobility,
 - (v) Self-direction,
 - (vi) Capacity for independent living, and
 - (vii) Economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Displaced homemaker. An individual who is an adult; has not worked full-time full-year (2,080 hours) in the labor force for a number of years but has during such years worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing dif-

ficulty in obtaining or upgrading employment.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled and is the applicant/borrower or the coapplicant/coborrower; or

(2) Two or more unrelated elderly (age 62 or older), disabled persons who are living together, at least one of whom is the applicant/borrower or coapplicant/coborrower; or

(3) In the case of a family where a deceased borrower/coborrower or spouse was at least 62 years old or disabled, the surviving household members shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of his/her death; and

(ii) If one of the surviving members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of death, the dwelling of the deceased family member was financed under title V of the Housing Act of 1949, as amended.

Eligible lender. A Lender meeting the criteria outlined in §1980.309 who has requested and received RHS approval for participation in the program.

Existing dwelling. A dwelling which has been completed for more than 1 year as evidenced by an occupancy permit or a similar document.

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is parents living with their adult children.

Federal National Mortgage Association (Fannie Mae) rate. The rate authorized in exhibit B of FmHA Instruction 440.1 (available in any RHS office).

Finance Office. The office which maintains RHS's financial records.

First-time homebuyer. Any individual who (and whose spouse) has had no present ownership in a principal residence during the 3 year period ending on the date of purchase of the property acquired with a guaranteed loan under this subpart. A first-time homebuyer includes displaced homemakers and single parents even though they might have owned, or resided in, a dwelling with a spouse. This definition is used to determine RHS processing priority in accordance with §1980.353.

Guaranteed loan. A loan made, held, and serviced by a Lender for which RHS has entered into an agreement with the Lender in accordance with this subpart.

Household or family. The applicant, coapplicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months. The temporary absence of a child from the home due to placement in foster care shall not be taken into account in considering family composition and size. Foster children placed in the borrower's home and live-in aides shall not be counted as members of the household.

Interest assistance. Loan assistance payments made by RHS to the Lender on behalf of the borrower.

Lender. The organization making, holding, and/or servicing the loan which is guaranteed under the provisions of this subpart. The Lender is also the party requesting the guarantee. The Lender includes an entity purchasing an RHS guaranteed loan. A purchasing Lender acquires all the privileges, duties, and responsibilities of the originating Lender. The Lender is primarily responsible for originating, underwriting, servicing, and, where necessary, liquidating the loan and disposing of the property in a manner consistent with maximizing the Government's interest.

Lender agreement. The signed master agreement between RHS and the Lender setting forth the Lender's loan responsibilities for loan processing and servicing guaranteed RH loans.

Lender record change. The Lender's notice to RHS of a change of Lender or a change of servicer.

Liquidation. Liquidation of the loan occurs when the Lender acquires title to the security, a third party buys the property at the foreclosure sale, or the borrower sells the property to a third party in order to avoid or cure a default situation with the prior approval of the Lender and RHS. In states providing a redemption period, the Lender does not typically acquire title until after expiration of the redemption period.

Liquidation expense. The Lender's cost of liquidation including those costs that do not qualify as a protective advance.

Loan note guarantee. The signed commitment issued by RHS setting forth the terms and conditions of the guarantee.

Manufactured home. A structure built to the Federal Manufactured Home Construction and Safety Standards and RHS thermal requirements.

Master interest assistance agreement. The agreement among RHS, the borrower, and the Lender which provides the basis for payment of interest assistance and shared equity.

Minor. A person under 18 years of age. Neither the applicant, coapplicant, or spouse may be counted as a minor. Foster children placed in the borrower's home are not counted as minors for the purpose of determination of annual or adjusted income.

Net family assets. Include:

(1) The value of equity in real property, savings, individual retirement accounts (IRA), demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:

- (i) Interests in Indian Trust land,
- (ii) The value of the dwelling and a minimum adequate site,
- (iii) Cash on hand which will be used to reduce the amount of the loan,
- (iv) The value of necessary items of personal property such as furniture and automobiles and the debts against them,
- (v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and
- (vi) The value of a trust fund that has been established and the trust is

not revocable by, or under the control of, any member of the household, so long as the funds continue to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be less than fair market value if the household member receives important consideration not measurable in dollar terms.

Net proceeds. The proceeds remaining from the property after it is sold or its net value as determined in accordance with this subpart. The determination of net proceeds depends upon whether the property is sold or acquired by the Lender. Net proceeds may be determined using the appraised value and subtracting authorized deductions when the Lender acquires the property.

Protective advance. Advances made by the Lender when the borrower is in liquidation or otherwise in default to protect or preserve the security from loss or destruction.

Qualifying income. The amount of the applicant's income which the lender determines is adequate and dependable enough to consider for repayment ability. This figure may be different from the adjusted income which is used for RHS program eligibility. Qualifying income is typically less than adjusted income unless the applicant has income from the sources listed in §1980.347(e).

Rural area. An area meeting the requirements of §1980.312. Rural areas are designated on maps available in the RHS office servicing that area.

Single parent. An individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

State Director. Director of RHS programs within a state office area.

Veteran. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps,

or Coast Guard under conditions other than dishonorable discharge including "clemency discharges" and who served on active duty in such forces:

(1) From April 6, 1917, through March 31, 1921;

(2) From December 7, 1941, through December 31, 1946;

(3) From June 27, 1950, through January 31, 1955; or

(4) For more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(b) The following abbreviations are applicable to this subpart:

Fannie Mae— Federal National Mortgage Association.

FCS— Farm Credit Service.

FHA— Federal Housing Administration.

Freddie Mac— Federal Home Loan Mortgage Corporation.

Ginnie Mae— Government National Mortgage Association.

HUD— Department of Housing and Urban Development.

IRS— Internal Revenue Service.

MCCs— Mortgage Credit Certificates.

PITI— Principal, Interest, Taxes, and Insurance.

RHS— Rural Housing Service.

URAR— Uniform Residential Appraisal Report.

VA— Department of Veterans Affairs.

§§ 1980.303–1980.307 [Reserved]

§ 1980.308 Full faith and credit.

The loan note guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. Misrepresentation includes negligent misrepresentation. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of RHS.

The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which RHS acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the Lender conducts liquidation in an expeditious manner, in accordance with the provisions of § 1980.374, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

§ 1980.309 Lender participation in guaranteed RH loans.

(a) *Qualification.* The following Lenders are eligible to participate in the RHS guaranteed RH loan program upon presentation of evidence of said approval and execution of the RHS Lender Agreement.

- (1) Any state housing agency;
- (2) Any Lender approved by HUD as a supervised or nonsupervised mortgagee for submission of one to four family housing applications for Federal Housing Mortgage Insurance or as an issuer of Ginnie Mae mortgage backed securities;
- (3) Any Lender approved as a supervised or nonsupervised mortgagee for the VA;
- (4) Any Lender approved by Fannie Mae for participation in one to four family mortgage loans;
- (5) Any Lender approved by Freddie Mac for participation in one to four family mortgage loans;
- (6) An FCS institution with direct lending authority; and
- (7) Any Lender participating in other RHS, Rural Business-Cooperative Serv-

ice, Rural Utilities Service, and/or Farm Service Agency guaranteed loan programs.

(b) *Lender approval.* A Lender listed in paragraph (a) of this section must request a determination of eligibility in order to participate as an originating Lender in the program. Requests may be made to the state office serving the state jurisdiction or to the National office when multiple state jurisdictions are involved.

(1) The Lender must provide the following information to RHS:

- (i) Evidence of approval, as appropriate, for the criteria under paragraph (a) of this section, which the Lender meets.
- (ii) The Lender's Tax Identification Number.
- (iii) The name of an official of the Lender who will serve as a contact for RHS regarding the Lender's guaranteed loans.
- (iv) A list of names, titles, and responsibilities of the Lender's principal officers.
- (v) An outline of the Lender's internal loan criteria for issues of credit history and repayment ability and a copy of the Lender's quality control plan for monitoring production and servicing activities.
- (vi) An executed certification regarding debarment, suspension, or other matters—primary covered transactions. The certification will be obtained using a form prescribed by RHS.

(2) The Lender must agree to:

- (i) Obtain and keep itself informed of all program regulations and guidelines including all amendments and revisions of program requirements and policies.
- (ii) Process and service RHS guaranteed loans in accordance with Agency regulations.
- (iii) Permit RHS employees or its designated representatives to examine or audit all records and accounts related to any RHS loan guarantee.
- (iv) Be responsible for the servicing of the loan, or if the loan is to be sold, sell only to an entity which meets the provisions of paragraph (a) of this section.
- (v) Use forms which have been approved by FHA, Fannie Mae, Freddie

Mac, or, for FCS Lenders, use the appropriate FCS forms.

(vi) Maintain its approval if qualification as an RHS Lender was based on approval by HUD, VA, Fannie Mae, or Freddie Mac including maintaining the minimum allowable net capital, acceptable levels of liquidity, and any required fidelity bonding and/or mortgage servicing errors and omissions policies required by HUD, VA, Fannie Mae, or Freddie Mac, as appropriate.

(vii) Operate its facilities in a prudent and business-like manner.

(viii) Assure that its staff is well trained and experienced in loan origination and/or loan servicing functions, as necessary, to assure the capability of performing all of the necessary origination and servicing functions.

(ix) Notify RHS in writing if the Lender:

(A) Ceases to meet any financial requirements of the entity under which the Lender qualified for RHS eligibility;

(B) Becomes insolvent;

(C) Has filed for bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

(D) Has taken any action to cease operations or discontinue servicing or liquidating any or all of its portfolio of RHS guaranteed loans;

(E) Has any change in the Lender name, location, address, or corporate structure;

(F) Has become delinquent on any Federal debt or has been debarred, suspended, or sanctioned by any Federal agency or in accordance with any applicable state licensing or certification requirements.

(c) [Reserved]

(d) *Handling applications for Lender eligibility.* Upon determination of a Lender's eligibility to originate loans, RHS and the Lender will execute the RHS Lender Agreement. The Lender Agreement establishes the Lender's authorization for participation in the program as an originator, servicer, or holder of RHS single family mortgage loans. The Lender Agreement shall be in effect until terminated by either the Agency or the Lender in accordance with the terms of the Lender Agreement and this subpart.

(e) *Lender sale of guaranteed loans.*

Loans guaranteed under this subpart may be sold only to entities which meet the qualifications in paragraphs (a) and (b) of this section or directly to Fannie Mae or Freddie Mac. Such entities are referred to as a Lender and are to be treated as a Lender for all purposes under this subpart. The selling Lender shall provide the original loan note guarantee to the purchasing Lender. The selling Lender is responsible for reporting the sale of any loan to RHS within 30 days using a reporting form provided by RHS. The purchasing Lender must execute a Lender Agreement or have a valid Lender Agreement on file with RHS. The purchasing Lender shall succeed to all rights, title, and interest of the Lender under the loan note guarantee. Any necessary or convenient assignments or other instruments relating to the loan and any other actions necessary or convenient to perfect or record such transaction are the responsibility of the purchasing Lender. The purchasing Lender assumes the obligations of, and will be bound by and will comply with, all covenants, agreements, terms, and conditions contained in any note, security instrument, loan note guarantee, and of any outstanding agreements in connection with such loan purchased. The purchasing Lender shall be subject to any defenses, claims, or setoffs that RHS would have against the Lender if the Lender had continued to hold the loan.

(f) *Lender responsibility.* The Lender will be responsible for the processing, servicing, and liquidation (if necessary) of the loan. The Lender may use agents, correspondents, branches, financial experts, or other institutions in carrying out its responsibilities. Lenders are fully responsible for their own actions and the actions of those acting on the Lender's behalf.

(1) *Processing.* The Lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth in this subpart. The Lender will obtain, complete, and submit to RHS the items required in §1980.353(c). The Lender may utilize the services of a non-RHS approved lender for originating residential loans. The RHS approved lender is responsible for the

loan underwriting and for obtaining the RHS conditional commitment. The agent may close the loan in its name provided the loan is immediately transferred to the approved lender to whom the guarantee will be issued.

(2) *Servicing.* Lenders are fully responsible for servicing and protecting the security for all guaranteed loans. When servicing is carried out by a third party, the Lender will inform RHS of the name and address of the servicer.

(3) *Liquidation.* The Lender will complete any liquidation of loans guaranteed under the provisions of the Lender Agreement. Loss claims will be submitted on the RHS Loss Report form. The loss report will be accompanied by supporting information to outline disposition of all security pledged to secure the loan. The Lender shall also effect collection of the debt from other assets of the borrower to the extent practicable.

(4) *Counseling.* Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area. When home ownership counseling is provided or sponsored by RHS or another Federal agency in the local area, the Lender must require the borrower to successfully complete the course.

(g) *Monitoring a Lender's processing and servicing of loans.* If RHS determines that the Lender is not fulfilling the obligations of the Lender Agreement or that the Lender fails to maintain the required criteria, the Lender will be notified in writing of the deficiencies and allowed a maximum of 30 days to correct them. If the Lender fails to make the required corrections, RHS will proceed as provided in paragraph (h) of this section.

(1) *Loan processing review for new Lenders.* RHS may review loans developed by an eligible Lender to assure compliance with, and understanding of, Agency regulations.

(2)–(3) [Reserved]

(h) *Termination of Lender eligibility.* The Lender remains eligible as long as the Lender meets the criteria in paragraph (a) of this section unless that Lender's status is revoked by RHS or

by another Federal agency. RHS shall revoke the eligible Lender status of any Lender who fails to comply with requirements of paragraph (b) or (e) of this section. Status may also be revoked if the Lender violates the terms of the Lender Agreement, fails to properly service any guaranteed loan, or fails to adequately protect the interests of the Lender and the Government. If the Lender is determined to be no longer eligible, the Lender will continue to service any outstanding loans guaranteed under this subpart which are held by the Lender or RHS may require the Lender to transfer the servicing of the loan. In addition to revocation of eligible Lender status, the Lender may be debarred by RHS.

§ 1980.310 Loan purposes.

The purpose of a loan guaranteed under this subpart must be to acquire a completed dwelling and related facilities to be used by the applicant as a primary residence. The loan may be to purchase a new dwelling or an existing dwelling. The guaranteed loan may be for "take out" financing for a loan to construct a new dwelling or improve an existing dwelling when the construction financing is arranged in connection with the loan package. The loan may include funds for the purchase and installation of necessary appliances, energy saving measures, and storm cellars. Incidental expenses for tax monitoring services, architectural, appraisal, survey, environmental, and other technical services may be included. Subject to §1980.311, eligible loan purposes also include:

(a) Necessary related facilities such as a garage, storage shed, walks, driveway, and water and/or sewage facilities including reasonable connection fees for utilities which the buyer is required to pay.

(b) Special design features or equipment necessary to accommodate a physically disabled member of the household.

(c) The cost of establishing an escrow account for real estate taxes and/or insurance premiums.

(d) Title clearance, title insurance, and loan closing; stock in a cooperative lending agency necessary to obtain the loan; and, for low-income applicants

§ 1980.311

only, loan discount points to reduce the note interest rate from the rate authorized in §1980.320 not exceeding the amount typical for the area.

(e) Provide funds for seller equity and/or essential repairs when an existing guaranteed loan is to be assumed simultaneously.

§ 1980.311 Loan limitations and special provisions.

(a) *Prohibited loan purposes.* Conditional commitments will not be issued if loan funds are to be used for:

(1) Payment of construction draws.

(2) The purchase of furniture or other personal property except for essential equipment and materials authorized in accordance with §1980.310.

(3) Refinancing RHS debts, debts owed the Lender (other than construction/development, financing incurred in conjunction with the proposed loan), or debts on a manufactured home.

(4) Purchase or improvement of income-producing land, or buildings to be used principally for income-producing purposes, or buildings not essential for RH purposes, or to buy or build buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise.

(5) Payment of fees, charges, or commissions, such as finder's fees for packaging the applications or placement fees for the referral of a prospective applicant to RHS.

(6) Improving the entry of a homestead entryman or desert entryman prior to receipt of patent.

(7) Purchase a dwelling with an in-ground swimming pool.

(b) *Limitations.* The principal purpose of the loan, except for a subsequent loan to an existing borrower, must be to buy or build a dwelling. The loan may include additional funds in accordance with §1980.310. The amount of the loan may not exceed the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702).

(1) A loan for the acquisition of a newly constructed dwelling that meets the requirements of §1980.341(b) of this subpart may be made for up to 100 percent of the appraised value or the cost of acquisition and any necessary devel-

7 CFR Ch. XVIII (1-1-09 Edition)

opment including those purposes in §1980.310, whichever is less.

(2) A loan for the acquisition of an existing dwelling and development, if any, in conjunction with the acquisition of an existing dwelling may be made for up to 100 percent of the appraised value or the cost of acquisition and necessary development including those purposes in §1980.310, whichever is less.

(3) A loan for the acquisition of a newly constructed dwelling (a dwelling that does not meet the definition for an existing dwelling) that does not meet the requirements of §1980.341(b) is limited to 90 percent of the present market value.

(c) *Subdivisions.* Housing units may be financed in existing subdivisions approved by local, regional, state, or Federal government agencies before issuance of a conditional commitment. The subdivision must meet the requirements of §1901.203. An existing subdivision is one in which the local government has accepted the subdivision plan, its principal developments and right-of-ways, the construction of streets, water and water/waste disposal systems, and utilities; is at a point which precludes any major changes; and provisions are in place for continuous maintenance of the streets and the water and water/waste disposal systems. A dwelling served by a homeowners association (HOA) may be accepted when the project has been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac.

§ 1980.312 Rural area designation.

A rural area is an area which is identified as rural by RHS in accordance with 7 CFR part 3550. Current county maps showing ineligible areas are available in RHS field offices.

[60 FR 26985, May 22, 1995, as amended at 67 FR 78329, Dec. 24, 2002]

§ 1980.313 Site and building requirements.

(a) *Rural area.* The property on which the loan is made must be located in a designated rural area as identified in §1980.312. A nonfarm tract to be purchased or improved with loan funds must not be closely associated with farm service buildings.

(b) *Access.* The property must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surface or all-weather surface.

(c) *Water and water/waste disposal system.* A nonfarm tract on which a loan is to be made must have an adequate water and water/waste disposal system and other related facilities. Water and water/waste disposal systems serving the site must be approved by a state or local government agency. When the site is served by a privately owned and centrally operated water and water/waste disposal system, the system must meet the design requirements of the State Department of Health or comparable reviewing and regulatory agency. Written verification must be obtained from the regulatory agency that the private water and water/waste system complies with the Safe Drinking Water Act (42 U.S.C. 300F *et seq.*), and the Clean Water Act (33 U.S.C. 1251 *et seq.*), respectively. A system owned and/or operated by a private party must have a binding agreement which allows interested third parties, such as the Lender, to enforce the obligation of the operator to provide satisfactory service at reasonable rates.

(d) [Reserved]

(e) *Modest house.* Dwellings financed must provide decent, safe, and sanitary housing and be modest in cost. A dwelling that can be purchased with a loan not exceeding the maximum dollar limitation of section 203(b)(2) of the National Housing Act (12 U.S.C. 1702) is considered modest. Generally, the value of the site must not exceed 30 percent of the total value of the property. When the value of the site is typical for the area, as evidenced by the appraisal, and the site cannot be subdivided into two or more sites, the 30 percent limitation may be exceeded.

(f) *Thermal standards.* Dwellings financed shall meet the standards outlined in exhibit D of subpart A of part 1924 except for an existing dwelling, if documentation is provided to establish that the actual cost of heating and cooling is not significantly greater than those costs for a dwelling that meets RHS's thermal standards. If the dwelling is excepted, only the perimeter of the house at the band beam and

the heat ducts in unheated basements or crawlspace must be insulated.

(g) *Existing dwelling.* An existing dwelling financed must be cost effective to the applicant including reasonable costs of utilities and maintenance for the area. Loan guarantees may be made on an existing manufactured home when it meets the provisions of paragraph (i)(2)(i) of this section.

(h) *Repairs.* Any dwelling financed with an RHS guarantee must be structurally sound, functionally adequate, and placed in good repair prior to issuance of the Loan Note Guarantee except as provided in § 1980.315.

(i) *Manufactured homes.* New units that meet the requirements of exhibit J of subpart A of part 1924 and purchased through RHS approved dealer-contractors may be considered for a guaranteed loan under this subpart. The Lender may obtain a list of RHS approved models and dealer-contractors from any RHS office in the area served.

(1) Loans may be guaranteed for the following purposes when the security covers both the unit and the lot:

(i) A new unit and related site development work on a site owned or purchased by the applicant which meets the requirements and limitations of this section or a leasehold meeting the provisions of § 1980.314.

(ii) Transportation and set-up costs for a new unit.

(2) Loans may not be guaranteed for:

(i) An existing unit and site unless it is already financed with a Section 502 RH direct or guaranteed loan, is being sold from RHS inventory, or is being sold from the Lender's inventory provided the Lender acquired possession of the unit through a loan guaranteed under this subpart.

(ii) The purchase of a site without also financing the unit.

(iii) Existing debts owed by the applicant/borrower.

(iv) A unit without an affixed certification label indicating the unit was constructed in accordance with the Federal Manufactured Home Construction and Safety Standards.

(v) Alteration or remodeling of the unit when the initial loan is made.

(vi) Furniture, including movable articles of personal property such as

§ 1980.314

drapes, beds, bedding, chairs, sofas, lamps, tables, televisions, radios, stereo sets, and similar items. Items such as wall-to-wall carpeting, refrigerators, ovens, ranges, clothes washers or dryers, heating or cooling equipment, or similar items may be financed.

(vii) Any unit not constructed to the RHS thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

§ 1980.314 Loans on leasehold interests.

A loan may be guaranteed if made on a leasehold owned or being acquired by the applicant when the Lender determines that long-term leasing of homesites is a well established practice and such leaseholds are freely marketable in the area provided the Lender determines and certifies to RHS that:

(a) *Unable to obtain fee title.* The applicant is unable to obtain fee title to the property.

(b) *Unexpired term.* The lease has an unexpired term (term plus option to renew) of at least 40 years from the date of approval.

§ 1980.315 Escrow accounts for exterior development.

When proposed exterior development work cannot be completed because of weather and the work remaining to be done does not affect the livability of the dwelling, an escrow account *for exterior development only* may be established by the originating lender if the following conditions are met:

(a) A signed contract and bid schedule is in effect for the proposed exterior development work.

(b) The contract for development work must provide for completion within 120 days.

(c) The Lender agrees to obtain a final inspection report and advise RHS when the work has been completed.

(d) The escrow account must be funded in an amount sufficient to assure the completion of the remaining work. This figure should be 150 percent of the cost of completion but may be higher if the Lender determines a higher amount is needed.

7 CFR Ch. XVIII (1-1-09 Edition)

§ 1980.316 Environmental requirements.

The requirements of subpart G of part 1940 apply to loan guarantees made under this subpart. Lenders and applicants must cooperate with RHS in the completion of these requirements. Lenders must become familiar with these requirements so that they can advise applicants and reduce the probability of unacceptable applications being submitted to RHS. RHS may require that Lenders and/or applicants obtain information for completing environmental assessments when necessary. The RHS approval official will utilize adequate, reliable information in completion of environmental review. Sources of information include, but are not limited to, the State Natural Resource Management Guide (available in any RHS office) and, as necessary, the technical expertise available within the Agency as well as other agencies and organizations to assist in the completion of the environmental review.

§ 1980.317 Equal opportunity and non-discrimination requirements in use, occupancy, rental, or sale of housing.

(a) *Compliance.* Loans guaranteed under this subpart are subject to the provisions of various civil rights statutes. RHS and the Lender may not discriminate against any person in making guaranteed housing loans available, or impose different terms and conditions for the availability of these loans based on a person's race, color, familial status, religion, sex, age, physical or mental disability, or national origin, provided the applicant possesses the capacity to enter into a legal contract for services. These requirements will be discussed with the applicant, builder, developer, and other parties involved as early in the negotiations as possible.

(b) *Reporting.* If there is indication of noncompliance with these requirements, the matter will be reported by the borrower, Lender, or RHS personnel to the Administrator or the Director, Equal Opportunity Staff. Complaints and compliance will be handled by RHS in accordance with subpart E of part 1901.

(c) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and non-discrimination forms and requirements are applicable when the loan guarantee involves a construction contract between the borrower and the contractor that is more than \$10,000. The Lender is responsible for seeing that the requirements of paragraphs (c)(1) through (c)(5) of this section are met:

(1) *Equal Opportunity Agreement.* Before loan closing, each borrower whose loan involves a construction contract of more than \$10,000 must execute the RHS Equal Opportunity Agreement or the equivalent HUD form.

(2) *Construction contract or subcontract in excess of \$10,000.* If the contract or a subcontract exceeds \$10,000:

(i) The contractor or subcontractor must submit the Agency Compliance Statement before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract.

(iii) With notification of the contract award, the contractor must receive the Agency Notice to Contractors and Applicants signed by RHS, with an attached Equal Employment Opportunity poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(iv) Under Executive Order 11246 and Executive Order 11375, the contractor or subcontractor, subject to the requirements of paragraph (c)(5) of this section, is prohibited from discriminating because of race, color, religion, sex, or national origin to ensure equality of opportunity in all aspects of employment.

(3) *One hundred or more employees and construction contract or subcontract exceeds \$10,000.* If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than \$10,000, in addition to the requirements of paragraph (c)(2) of this section, a report must be filed annually on or before March 31. Failure to file timely, complete, and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions

on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, D.C. 20006.

(4) *Fifty or more employees and construction contract or subcontract exceeds \$50,000.* If the contract or subcontract is more than \$50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (c)(2) of this section, each such contractor or subcontractor must be informed that the contractor or subcontractor must develop a written affirmative action compliance program for each of the contractor's or subcontractor's establishments and put it on file in each of the personnel offices within 120 days of the commencement of the contract or subcontract.

(5) [Reserved]

(6) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with RHS.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by RHS for good cause shown by the complainant.

§ 1980.318 Flood or mudslide hazard area precautions.

RHS policy is to discourage lending in designated flood and mudslide hazard areas. Loan guarantees shall not be issued in designated flood/mudslide hazard areas unless there is no practical alternative.

(a) *Dwelling location.* Dwellings and building improvements located in special flood or mudslide hazard areas, as

§ 1980.319

designated by the Federal Emergency Management Agency (FEMA) may be financed under this subpart only if:

(1) The community, as a result of such designation by FEMA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) The dwelling location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan (see paragraph (a)(1) of this section).

(3) Potential environmental impacts and feasible alternatives have been fully considered by RHS in accordance with the requirements of subpart G of part 1940.

(4) The first floor elevation is above the 100 year flood zone elevation.

(b) *Flood insurance.* If the dwelling is located in a special flood or mudslide hazard area, flood insurance must be purchased by the borrower prior to loan closing and maintained thereafter. See subpart B of part 1806 (FmHA Instruction 426.2).

§ 1980.319 Other Federal, State, and local requirements.

In addition to the specific requirements of this subpart, on all proposals financed with an RHS guarantee, Lenders and/or applicants must coordinate with all appropriate Federal, state, and local agencies. Applicants and/or Lenders will be required to comply with any Federal, state, or local laws, regulatory commission rules, ordinances, and regulations which exist at the time the loan guarantee is issued which affect the dwelling including, but not limited to:

- (a) Borrowing money and giving security therefore;
- (b) Land use zoning;
- (c) Health, safety, and sanitation standards; and
- (d) Protection of the environment and consumer affairs.

§ 1980.320 Interest rate.

The interest rate must not exceed the established applicable usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be

7 CFR Ch. XVIII (1-1-09 Edition)

agreed upon by the borrower and the Lender and must not be more than the lender's published rate for VA first mortgage loans with no discount points or the current Fannie Mae rate as defined in § 1980.302(a), whichever is higher. The lender must document the rate and the date it was determined.

§ 1980.321 Terms of loan repayment.

(a) *Note.* Principal and interest shall be due and payable monthly.

(b) *Term.* The term for final maturity shall be not less than 30 years from the date of the note and not more than 30 years from the date of the first scheduled payment.

§ 1980.322 Loan guarantee limits.

The amount of the loan guarantee is 90 percent of the principal amount of the loan.

(a) The maximum loss payment under the guarantee of Single Family Housing loans is the lesser of:

(1) Any loss of an amount equal to 90 percent of the principal amount actually advanced to the borrower, or

(2) Any loss sustained by the Lender of an amount up to 35 percent of the principal amount actually advanced to the borrower, plus 85 percent of any additional loss sustained by the Lender of an amount up to the remaining 65 percent of the principal amount actually advanced to the borrower.

(b) Loss includes only:

(1) Principal and interest evidenced by the guaranteed loan note;

(2) Any loan subsidy due and owing; and

(3) Any principal and interest indebtedness on RHS approved protective advances for protection and preservation of security.

(c) Interest (including any subsidy) shall be covered by the loan note guarantee to the date of the final loss settlement when the Lender conducts liquidation in an expeditious manner in accordance with the provisions of § 1980.376.

§ 1980.323 Guarantee fee.

The Lender will pay a nonrefundable fee which may be passed on to the borrower. The amount of the fee is determined by multiplying the figure in exhibit K of FmHA Instruction 440.1

RHS, RBS, RUS, FSA, USDA**§ 1980.333**

(available in any RHS office) times 90 percent of the principal amount of the loan.

§ 1980.324 Charges and fees by Lender.

(a) *Routine charges and fees.* The Lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.

(b) *Late payment charges.* Late payment charges will not be covered by the guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late charges may be made only if:

(1) *Maximum amount.* The maximum amount does not exceed the percentage of the payment due as prescribed by HUD or Fannie Mae or Freddie Mac.

(2) *Routine.* They are routinely made by the Lender in similar types of loan transactions.

(3) *Payments received.* Payments have not been received within the customary time frame allowed by the Lender. The term "payment received" means that the payment in cash, check, money order, or similar medium has been received by the Lender at its main office, branch office, or other designated place of payment.

(4) *Calculating charges.* The Lender does not change the rate or method of calculating the late payment charges to increase charges while the loan note guarantee is in effect.

(5) *Interest-assisted loans.* The Lender will not penalize or charge any fee to the borrower when the only delinquency is a loan subsidy payment, which the Lender is entitled to but has not received.

§ 1980.325 Transactions which will not be guaranteed.

(a) *Lease payments.* Payments made on a lease will not be guaranteed.

(b) *Loans made by other Federal agencies.* Loans made by other Federal agencies will not be guaranteed. This does not preclude guarantees of loans made by an FCS institution with direct lending authority. This also does not preclude loans made by state or local government agencies assisted by a Federal agency.

§§ 1980.326–1980.329 [Reserved]**§ 1980.330 Applicant equity requirements.**

A loan to purchase a new or existing dwelling may be made up to the appraised market value of the security.

§ 1980.331 Collateral.

(a) *General.* The entire loan must be secured by a first lien on the property being financed (second lien when the loan is for a subsequent loan to an existing borrower or there is a transfer and assumption of an existing loan) and the Lender will maintain this lien priority. The Lender is responsible for assurance that proper and adequate security interest is obtained, maintained in existence, and of record to protect the interests of the Lender and RHS.

(b) *Third party liens, suits pending, etc.* Among other things in obtaining the required security, it is necessary to ascertain that there are no adverse claims or liens against the property or the borrower, and that there are no suits pending or anticipated that would affect the property or the borrower.

(c) *All collateral must secure the entire loan.* The Lender will not take separate collateral, including but not limited to mortgage insurance, to secure that portion of the loss not covered by the guarantee.

§ 1980.332 [Reserved]**§ 1980.333 Promissory notes and security instruments.**

(a) *Loan instruments.* The Lender may use its own forms for promissory notes, real estate mortgages, including deeds of trust and similar instruments, and security agreements provided there are no provisions that are in conflict or otherwise inconsistent with the provisions of § 1980.309(b)(2)(v). The Lender is responsible for determining that the security instruments are adequate and are properly maintained of record.

(b) *Interest assistance instruments.* When the loan guarantee is authorized from interest assisted funds, RHS will provide the Lender with the necessary forms and security instruments related to the interest assistance. The Lender will complete the Master Interest Assistance Agreement, assure that the

§ 1980.334

closing agent properly records a junior mortgage or deed of trust which grants RHS a lien on the property in order to protect RHS's equity share subject only to the first mortgage or deed of trust to the Lender or other authorized prior lien, and forward the agreements and recorded instruments to RHS.

§ 1980.334 Appraisal of property serving as collateral.

An appraisal of all property serving as security for the proposed loan will be completed and submitted to RHS for review with the request for loan guarantee. The Lender may pass the cost of the appraisal on to the borrower. The appraisal must have been completed within 6 months of the date the request for a conditional commitment is submitted to RHS.

(a) *Qualified appraiser.* The Lender will use an appraiser that is properly licensed or certified, as appropriate, to make residential real estate appraisals in accordance with the criteria set forth by the Appraiser Qualification Board (AQB) of the Appraisal Foundation regardless of the amount of the loan. Appraisers may not discriminate against any person in making or performing appraisal services because of race, color, familial status, religion, sex, age, disability, or national origin.

(b) *Appraisal report.* Residential appraisals will be completed using the sales comparison (market) and cost approach to market value.

(1) *URAR.* The appraiser will use the most recent revision of the URAR.

(i) The "Estimated Reproduction Cost-New of Improvements" section of the form must be completed when the dwelling is less than 1 year old.

(ii) Not less than three comparable sales, which are not more than 12 months old, will be used unless the appraiser provides documentation that such comparables are not available in the area. Comparable sales should be located as close as possible to the subject dwelling. When the need arises to use a comparable sale that is a considerable distance from the subject, the appraiser must use his or her knowledge of the area and apply good judgment in selecting comparable sales that are the best indicators of value for the subject property.

7 CFR Ch. XVIII (1-1-09 Edition)

(2) *Supporting documentation.* A narrative explanation supporting unusual adjustments must be attached to the appraisal.

(3) *Photographs.* The appraisal report must include photographs which clearly provide front, rear, and street scene views of the subject property, and a front view for each comparable sale used in the completion of the appraisal.

(c) *RHS acceptance.* The Lender will be required to correct or complete any appraisal returned by RHS for corrective action.

§§ 1980.335-1980.339 [Reserved]

§ 1980.340 Acquisition, construction, and development.

(a) *Acquisition of property.* The Lender is responsible for seeing that the property to be acquired with loan funds is acquired as planned and that the required security interest is obtained.

(b) *New construction.* A new dwelling financed with a guaranteed loan must:

(1) Have been built in accordance with building plans and specifications that contain approved building code certifications (eligible certifiers are listed in § 1924.5(f)(1)(iii)).

(2) Conform to RHS thermal standards (exhibit D of subpart A of part 1924).

(i) The builder may certify conformance with RHS thermal standards contained in paragraph IV A of exhibit D of subpart A of part 1924.

(ii) A qualified, registered architect or a qualified, registered engineer must certify conformance with RHS thermal standards contained in paragraph IV C of exhibit D of subpart A of part 1924.

(c) *Development.* The Lender and borrower are responsible for seeing that the loan purposes are accomplished and loan funds are properly utilized. This includes, but is not limited to, seeing that:

(1) The applicable development standards are adhered to;

(2) Drawings and specifications are certified and complied with;

(3) Adequate water, electric, heating, waste disposal, and other necessary utilities and facilities are obtained;

(4) Equal opportunity and non-discrimination requirements are met, (see § 1980.317); and

(5) A builder's warranty is issued when new construction, repair, or rehabilitation is involved, which provides for at least 1 year's warranty from the date of completion or acceptance of the work.

§ 1980.341 Inspections of construction and compliance reviews.

(a) *Qualified inspectors.* Inspections will be made during construction by a construction inspector deemed qualified and approved by the Lender. A qualified inspector is one that a reasonable person would hire to perform an inspection of his/her own dwelling.

(b) *Inspections.* Inspections shall be done by a party the Lender determines to be qualified, such as a HUD approved fee inspector. The sale agreement shall identify which party (i.e., purchaser or seller) is responsible to obtain and pay for required inspections and certifications. In connection with inspections involving construction contracts, equal opportunity and nondiscrimination compliance reviews must be made as required by § 1980.317.

(1) For existing dwellings, inspections must be made to determine that the dwelling:

(i) Meets the current requirements of HUD Handbooks 4150.1 and 4905.1 (available from the HUD Ordering Desk 1-800-767-7468).

(ii) Meets the thermal standards per § 1980.313(f).

(2) For a newly constructed dwelling, when construction is planned, the Lender must see that the following inspections are made in addition to any additional inspections the Lender deems appropriate:

(i) When footings and foundations are ready to be poured but prior to backfilling.

(ii) When shell is closed in but plumbing, electrical, and mechanical work are still exposed.

(iii) When construction is completed prior to occupancy.

(iv) Inspections under paragraphs (b)(2) (i) and (ii) of this section are not required when the builder supplies an insured 10 year warranty plan acceptable under the requirements of exhibit L of subpart A of part 1924.

(c) *Water and water/waste disposal.* The Lender will see that the water and

water/waste disposal systems have been approved by a state or local government agency.

§§ 1980.342–1980.344 [Reserved]

§ 1980.345 Applicant eligibility requirements for a guaranteed loan.

Applicants who meet the requirements of this section are eligible for a loan guaranteed under this subpart. Applicants desiring loan assistance as provided in this subpart must file loan applications with a Lender that meets the requirements set forth in § 1980.309. The Lender may accept applications filed through its agents, correspondents, branches, or other institutions. The Lender must have at least one personal interview with the applicant to verify the information on the application and to obtain a complete picture of the applicant's financial situation.

(a) *Eligible income.* The applicant's adjusted annual income determined in accordance with § 1980.348 may not exceed the applicable income limit contained in exhibit C of FmHA Instruction 1980-D (available in any RHS office) at the time of issuance of the conditional commitment. Adjusted annual income is used to determine eligibility for the RHS loan guarantee.

(b) *Adequate and dependable income.* The applicant (and coapplicant, if applicable) has adequate and dependably available income. The applicant's history of income and the history of the typical annual income of others in the area with similar types of employment will be considered in determining whether the applicant's income is adequate and dependable.

(1) A farm or nonfarm business loss must be considered in determining repayment ability.

(2) A loss may not be used to offset other income in order to qualify for or increase the amount of RHS assistance.

(c) *Determining repayment ability.* In considering whether the applicant has adequate repayment ability, the Lender must calculate a total debt ratio. The applicant's total debt ratio is calculated by dividing the applicant's monthly obligations by gross monthly income.

(1) Monthly obligation consists of the principal, interest, taxes, and insurance (PITI) for the proposed loan (less any interest assistance under this program or any other assistance from a state or county sponsored program when such payments are made directly to the Lender on the applicant's behalf), homeowner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations such as alimony, child support, and other obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability.

(i) *Cosigned obligations.* Debts which have been cosigned by the applicant for another party must be considered unless the applicant provides evidence (usually canceled checks of the co-obligor or other third party) that it has not been necessary for the applicant to make any payments over the past 12 months.

(ii) *Liability on a previous mortgage.* When the applicant has disposed of a property through a sale, trade, or transfer without a release of liability, the debt must be considered unless the applicant provides evidence (usually canceled checks of the new owners) that the new owners have successfully made all payments over the past 12 months.

(2) Income, for the purpose of determining the total debt ratio, includes the total qualifying income of the applicant, coapplicant, and any other member of the household who will be a party to the note.

(i) An applicant's qualifying income may be different than the "adjusted annual income" which is used to determine program eligibility. In considering qualifying income, the Lender must determine whether there is a historical basis to conclude that the income is likely to continue. Typically, income of less than 24 months duration should not be included in qualifying income. If the applicant is obligated to pay child care costs, the amount of any Federal tax credit for which the applicant is eligible may be added to the applicant's qualifying income.

(ii) In considering income that is not subject to Federal income tax, the amount of tax savings attributable to the nontaxable income may be added for use with the repayment ratios. Adjustments for other than the applicable tax rate are not authorized. The Lender must verify that the income is not subject to Federal income tax and that the income (and its nontax status) is likely to continue. The Lender must fully document and support any adjustment made.

(3) The applicant meets RHS requirements for repayment ability when the applicant's total debt ratio is less than or equal to 41 percent and the ratio of the proposed PITI to income does not exceed 29 percent.

(4) Applicants who do not meet the requirements of this section will be considered ineligible unless another adult in the household has adequate income and wishes to join in the application as a coapplicant. The combined incomes and debts then may be considered in determining repayment ability.

(5) If the applicant's total debt ratio and/or PITI ratio exceed the maximum authorized ratio, the Lender may request RHS concurrence in allowing a higher ratio based on compensating factors. Acceptable compensating factors include but are not limited to the applicant having a history over the previous 12 month period of devoting a similar percentage of income to housing expense to that of the proposed loan, or accumulating savings which, when added to the applicant's housing expense and shows a capacity to make payments on the proposed loan. A low total debt ratio, by itself, does not compensate for a high PITI.

(d) *Credit history.* The applicant must have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless the cause of the problem was beyond the applicant's control and the criteria in paragraph (d)(3) of this section are met:

(i) Incidents of more than one debt payment being more than 30 days late if the incidents have occurred within the last 12 months. This includes more

than one late payment on a single account.

(ii) Loss of security due to a foreclosure if the foreclosure has occurred within the last 36 months.

(iii) Outstanding tax liens or delinquent Government debts with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(iv) A court-created or affirmed obligation (judgment) caused by non-payment that is currently outstanding or has been outstanding within the last 12 months.

(v) Two or more rent payments paid 30 days or more past due within the last 3 years.

(vi) Accounts which have been converted to collections within the last 12 months (utility bills, hospital bills, etc.).

(vii) Collection accounts outstanding, with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(viii) Any debts written off within the last 36 months.

(2) The following will not indicate an unacceptable credit history:

(i) "No history" of credit transactions by the applicant.

(ii) A bankruptcy in which applicant was discharged more than 36 months before application.

(iii) A satisfied judgment or foreclosure with no loss of security which was completed more than 12 months before the date of application.

(3) The Lender may consider mitigating circumstances to establish the borrower's intent for good credit when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed (e.g., loss of job; delay or reduction in government benefits or other loss of income; increased expenses due to illness, death, etc.); or

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the

goods or services purchased or contracted for.

(e) *Previous RHS loan.* RHS shall determine whether the applicant has had a previous RHS debt which was settled, or is subject to settlement, or whether RHS otherwise suffered a loss on a loan to the applicant. If RHS suffered any loss related to a previous loan, a loan guarantee shall not be issued unless RHS determines the RHS loss was beyond the applicant's control, and any identifiable reasons for the loss no longer exist.

(f) *Other Federal debts.* The loan approval official will check HUD's Credit Alert Interactive Voice Response System (CAIVRS) to determine if the applicant is delinquent on a Federal debt. The Lender will clearly document both its CAIVRS identifying number and the borrower and coborrower's CAIVRS access code near the signature line on the mortgage application form. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the Lender will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides the Lender with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. An outstanding judgment obtained by the United States in a Federal court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied. RHS loan guarantee funds may not be used to satisfy the judgment. If the judgment remains unsatisfied or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the Lender will reject the applicant.

§ 1980.346 Other eligibility criteria.

The applicant must:

(a) Be a person who does not own a dwelling in the local commuting area

or owns a dwelling which is not structurally sound, functionally adequate;

(b) Be without sufficient resources to provide the necessary housing and be unable to secure the necessary conventional credit without an RHS guarantee upon terms and conditions which the applicant could reasonably be expected to fulfill.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, Federated States of Micronesia, and the Republics of the Marshall Islands and Palau, or a noncitizen who resides in one of the foregoing areas after being legally admitted to the U.S. for permanent residence or on indefinite parole.

(d) Possess legal capacity to incur the loan obligation and have reached the legal age of majority in the state or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis. Because of the probability of their moving after graduation, full-time students will not be granted loans unless:

(1) The applicant intends to make the home his or her permanent residence and there are reasonable prospects that employment will be available in the area after graduation, and

(2) An adult member of the household will be available to make inspections if the home is being constructed.

§ 1980.347 Annual income.

Annual income determinations will be thoroughly documented in the Lender's casefile. Historical data based on the past 12 months or previous fiscal year may be used if a determination cannot logically be made. Annual income to be considered includes:

(a) Current verified income, either part-time or full-time, received by any applicant/borrower and all adult members of the household, including any coapplicant/coborrower.

(b) If any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/bor-

rower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future, or if interest assistance is involved, during the term of the Interest Assistance Agreement.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation must be computed as the estimated annual amount of such income for the upcoming 12 months. Consideration should be given to whether the income is dependable based on verification by the employer and the applicant's history of such income over the previous 24 months.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The *net* income from operation of a farm, business, or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by IRS regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "zero" in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm, or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation that could be claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business,

or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(v) A deduction for verified business expenses, such as for lodging, meals, or fuel, for overnight business trips made by salaried employees, such as long-distance truck drivers, who must meet these expenses without reimbursement.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in §1980.302(a), in excess of \$5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings; such as unemployment, disability and worker's compensation, and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic allowances, such as:

(i) Alimony and/or child support awarded in a divorce decree or separation agreement, unless the payments are not received and a reasonable effort has been made to collect them through the official entity responsible for enforcing such payments and they are not received as ordered; or

(ii) Recurring monetary gifts or contributions from someone who is not a member of the household.

(8) Any amount of educational grants or scholarships or VA benefits available for subsistence after deducting ex-

penses for tuition, fees, books, and equipment.

(9) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or coapplicant/coborrower, whether or not that family member lives in the unit.

(10) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 3 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following are not included in annual income but may be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse are not considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic, or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances; capital gains; insurance payments from health, accident, hazard, or worker's compensation policies; and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veteran's payments, which are not used for the aforementioned purposes and are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Any funds that a Federal statute specifies must not be used as the basis

§ 1980.348

for denying or reducing Federal financial assistance or benefits. (Listed in exhibit F of FmHA Instruction 1980-D, available in any RHS office.)

(f) Income of live-in aides who are not relatives of the applicant or members of the household will not be counted in calculating annual income and will not be considered in determination of repayment ability.

§ 1980.348 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1980.347 less the following:

(a) A deduction of \$480 for each member of the family residing in the household, other than the applicant, spouse, or coapplicant, who is:

(1) Under 18 years of age;

(2) Eighteen years of age or older and is disabled as defined in § 1980.302(a); or

(3) A full-time student aged 18 or older.

(b) A deduction of \$400 for any elderly family as defined in § 1980.302(a).

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family (as defined in § 1980.302(a)). This includes medical expenses for any household member the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance (e.g., dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, home nursing care, monthly payments on accumulated major medical bills, and full-time

7 CFR Ch. XVIII (1-1-09 Edition)

nursing or institutional care which cannot be provided in the home for a member of the household); and

(2) Reasonable attendant care and auxiliary apparatus expenses for each disabled member of any household to the extent necessary to enable any member of such household (including such disabled member) to be employed.

§§ 1980.349-1980.350 [Reserved]

§ 1980.351 Requests for reservation of funds.

Upon receipt of a viable loan application and prior to loan underwriting, the Lender may request a reservation of loan guarantee funds for the loan application. The request should be made as follows:

(a) The Lender must have a complete application on file that clearly indicates the borrower has sufficient qualifying income and an adequate credit history.

(b) The reservation shall be valid for 60 days. The Lender must submit a request for a loan guarantee on or before the expiration date of the reservation. *Substitutions of borrowers or dwellings are not authorized.*

(c) Reservations may be granted only when adequate funding authority is available. Reservations are subject to the availability of funds. Reservations will not exceed 90 percent of the funds available during that quarter.

(d) [Reserved]

(e) All reservations will expire at the end of 60 days or no later than the pooling date published in subpart L of part 1940 whichever occurs first.

(f) [Reserved]

§ 1980.352 [Reserved]

§ 1980.353 Filing and processing applications.

(a) *Loan priorities.* Complete applications will be considered by RHS in the order received from Lenders authorized to participate in the program except as provided in paragraph (b) of this section.

(b) *Preference.* Preference is considered when there is a shortage of funds and there is more than one request for a conditional commitment or reservation of funds ready for approval. Applications for guarantees on loans to

first-time homebuyers or veterans, their spouses, or children of deceased servicemen who died during one of the periods described in the definition of "Veteran" in §1980.302(a) will be given preference by RHS. Displaced homemakers and single parents are first-time homebuyers even though they previously owned or resided in a dwelling with a spouse.

(c) *Applications.* If, upon completion of the loan underwriting process of an application, the Lender concludes that the application can be considered for an RHS guarantee, the Lender will provide written documentation addressing each of the loan eligibility requirements of this subpart and the basis for the conclusion in the applicant's file. The Lender will submit a request for the guarantee using a Form FmHA 1980-21, "Request for Single Family Housing Loan Guarantee." The form should contain or be supplemented with all of the following information:

(1) Name, address, telephone number, social security number, age, citizenship status of the applicant, and number of persons in the household.

(2) Amount of loan request and proposed use of loan funds.

(3) Name, address, contact person, and telephone number of the proposed Lender.

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae or VA rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with §1980.320.

(5) Statement from the Lender that it will not make the loan as requested by the applicant without the proposed guarantee and that the applicant has been advised in writing that the applicant is subject to criminal action if he or she knowingly and willfully gives false information to obtain a federally guaranteed loan.

(6) If the applicant is not a United States citizen, evidence of being legally admitted for permanent residence or indefinite parole.

(7) The applicant's sex, race, and veteran status and whether applicant is a first-time homebuyer.

(8) An appraisal report including information about the dwelling location with respect to neighborhood and com-

munity services and facilities, business and industrial enterprises, and streets or roads serving the housing.

(9) Credit report obtained by the Lender.

(10) An equal opportunity agreement supplied by RHS for construction contracts costing more than \$10,000.

(11) Evidence of compliance with the Privacy Act of 1974.

(12) Lender's loan underwriting (repayment ability, creditworthiness, and security value).

(13) A certification from the borrower regarding debarment, suspension, ineligibility, and voluntary exclusion from Federal programs using a form supplied by RHS.

(14) A statement signed by the borrower acknowledging that the borrower understands that RHS approval of the guarantee is required and is subject to the availability of funds.

(15) A copy of a valid verification of income for each adult member of the household.

(16) A copy of the purchase agreement or bid for construction contract.

(d) [Reserved]

(e) *Verifying information provided.* Written documentation from third parties is the preferred method of verifying information. Verifications must pass directly from the source of information to the Lender and shall not pass through the hands of a third party or applicant.

(1) *Income verification.* Employment verifications and other income verifications obtained in accordance with this paragraph are valid for 120 days (180 days for proposed new construction). Income verifications must be valid at the time the conditional commitment is issued.

(i) An RHS approved form or the equivalent HUD/FHA/VA or Fannie Mae form will be used to verify employment income of the loan applicant except when the applicant is self-employed. The form will be signed by the applicant or borrower or accompanied by an authorization for a release of information form signed by the applicant or borrower and sent directly to the employer by the Lender. The Lender should also obtain copies of the three most recent paycheck stubs. The information in the employer verification

§ 1980.354

should be compared to the information in the paycheck stubs for consistency.

(ii) Income information that cannot be obtained by use of this form will be obtained in writing from third parties to the extent possible.

(iii) Alimony and/or child support payments will be verified by obtaining a copy of the divorce decree or other legal document indicating the amount of the payments. When the applicant states that less than the amount awarded is received, the Lender will request documentation from the official entity through which payments are received or other third party able to provide the verification when payment is not made through an official entity indicating the amounts and dates of payments to the applicant during the previous 12 months.

(iv) When it is not feasible to verify income in paragraph (e)(1)(iii) of this section through third parties, the Lender is authorized to accept an affidavit from the applicant stating the effort made to collect the amount awarded and the amounts and dates of payments received during the previous 12 months.

(v) Applicants and borrowers deriving their income from a farming or business enterprise will provide current documentation of the income and expenses of the operation. In addition, historic information from the previous fiscal year must be presented.

(vi) Social Security, pension, and disability income may be verified by obtaining a copy of the most recent award or benefit letter prepared and signed by the authorizing agency. This verification will be considered valid only for 1 year from the date of the award or benefit letter.

(2) *Verification of disability.* An RHS supplied form will be used to verify disability in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability.

(3) *Verification of alien status.* Aliens are required to present acceptable documentation of their status.

(4) *Verification of credit history and current debt.* The Lender shall determine all liabilities of all parties re-

7 CFR Ch. XVIII (1-1-09 Edition)

sponsible for repayment of the proposed loan. Credit reporting information must pass directly between the Lender and the credit reporting agency or source.

(i) Mortgage credit reports shall be used to determine creditworthiness unless the applicant resides in a remote rural area and conclusive or sufficient information would not be available. Information relative to judgments, garnishments, foreclosures, and bankruptcies must be obtained when a credit report is not obtained.

(ii) The credit report must be the most recent revision of the Residential Mortgage Credit Report form and meet the standards prescribed by Fannie Mae, Freddie Mac, HUD, VA, or RHS.

[60 FR 26985, May 22, 1995, as amended at 67 FR 78329, Dec. 24, 2002]

§ 1980.354 [Reserved]

§ 1980.355 Review of requirements.

Upon the Lender's review of the conditional commitment, the Lender may determine whether to accept the conditions outlined in it.

(a) *Accepting conditions.* Immediately after reviewing the conditions and requirements in the conditional commitment and the options listed on the back of the form, the Lender may proceed with loan closing. If the conditions cannot be met, the Lender and borrower may propose alternate conditions to RHS.

(b) *Canceling commitment.* If the Lender indicates in the acceptance or rejection of conditions that it desires to obtain a loan note guarantee and subsequently decides prior to loan closing that it no longer wants a loan note guarantee, the Lender should immediately advise the RHS approval official.

§§ 1980.356–1980.359 [Reserved]

§ 1980.360 Conditions precedent to issuance of the loan note guarantee.

(a) *Lender certification.* The Lender must certify to RHS that:

(1) No major changes have been made in the Lender's loan conditions and requirements since the issuance of the conditional commitment, except those approved in writing by RHS. In the

RHS, RBS, RUS, FSA, USDA**§ 1980.366**

event the interest rate has not been fixed at the time the conditional commitment is issued, and the interest rate increases between the time of issuance of the conditional commitment and loan closing, the Lender should note the change when submitting the package to RHS for loan guarantee. If either or both of the underwriting ratios are exceeded as a result of the interest rate increase, the Lender should list the compensating factors that demonstrate that sufficient repayment ability still exists.

(2) All planned property acquisition has been completed and:

(i) All development has been completed; or

(ii) An escrow account has been established in accordance with §1980.315.

(3) Required insurance coverage is in effect and an escrow account has been established for the payment of taxes and insurance.

(4) Truth-in-lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been met.

(6) The loan has been properly closed by a party skilled and experienced in conducting loan closings and the required security instruments, including any required shared equity instruments, have been obtained and recorded in the appropriate office in a timely and accurate manner.

(7) The borrower has a marketable (clean and defensible) title to the property then owned by the borrower, subject to the instrument securing the loan to be guaranteed, and any other exceptions approved in writing by RHS.

(8) Lien priorities are consistent with the requirements of the conditional commitment.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the conditional commitment.

(10) There has been no adverse change in the borrower's situation since the conditional commitment was issued by RHS.

(11) All other requirements of the conditional commitment have been met.

(b) *Inspections.* The Lender will certify to RHS that inspections in accord-

ance with §1980.341 have been completed.

(c) *Lender agreement.* There must be a valid lender agreement on file.

(d) *Lender file.* The Lender will maintain a file for each guaranteed RH loan containing originals or copies, as appropriate, of all documents pertaining to that loan.

§ 1980.361 Issuance of loan note guarantee.

(a) When the Lender has certified that all requirements have been met, delivered a completed Loan Closing Report, and paid the guarantee fee, the RHS approval official will concurrently execute the loan note guarantee. The original will be provided to the Lender and be attached to the note.

(b)-(c) [Reserved]

§ 1980.362 [Reserved]**§ 1980.363 Review of loan closing.**

The Lender must provide RHS with documentation that all of the closing conditions have been met within 10 days of issuance of the loan note guarantee. The Lender is responsible for deficiencies regardless of whether RHS discovers them in the loan closing review and/or notifies the Lender at that time. RHS reviews do not constitute any waiver of fraud, misrepresentation, or failure of judgment by the Lender.

§§ 1980.364–1980.365 [Reserved]**§ 1980.366 Transfer and assumption.**

(a) *General.* Lenders may, but are not required to, permit a transfer to an eligible applicant. A transfer and assumption must be approved by RHS in writing. Transfers without assumption are not authorized. Transfers and assumptions under this subpart are subject to the RHS guarantee fee.

(b) *Eligible transferee.* An eligible transferee is one who meets the eligibility requirements of this subpart and includes situations involving transfers of housing in an area that has ceased to be rural. Loans made and guaranteed under this subpart prior to March

29, 1989, may be transferred to an applicant meeting all eligibility requirements of this subpart except the applicant's adjusted annual income may exceed the maximum income for the area by not more than 10 percent.

(c) *Determinations by the Lender.* Before the transfer and assumption can be approved with the guarantee remaining in force, the Lender must determine that all of the following conditions can be met:

- (1) The transferee is an eligible applicant.
- (2) The transferee will assume the total remaining debt and acquire all of the property securing the guaranteed loan balance.
- (3) The transfer and assumption would not be made without the continuation of the loan guarantee.
- (4) The market value of the security being acquired by the transferee is at least equal to the secured indebtedness against it.
- (5) The priority of the existing lien securing the guaranteed loan will be maintained or improved.
- (6) Proper hazard insurance will be obtained.
- (7) The transfer and assumption can be properly closed and the conveyance instruments will be filed, registered, or recorded, as appropriate.
- (8) The transferor acknowledges continued liability for the debt in writing.

(d) *Changes in the promissory note or security instrument.* If the assumption will result in changes in the repayment schedule or the interest rate, the changes must be approved by the present debtors since they will remain liable for the debt. Any changes in rates and terms must not exceed rates and terms allowed for new loans under this subpart and cannot exceed the interest rate on the initial loan. The debt must not exceed the amount remaining due on the original loan. The term of the loan may cover a period of up to 30 years from the date of transfer and assumption. The Lender's request for approval to RHS will be accompanied by:

- (1) An explanation of the reasons for the proposed change in the rates and terms.
- (2) A statement that the Lender's determinations required by paragraph (c) of this section can be made.

(e) *Release of liability.* The Lender may not release the transferor of liability.

(f) *Forms and case numbers.* The assumption may be made on the Lender's assumption agreement form. The assumption agreement must contain the RHS case numbers of the transferor and the transferee.

(g) *Lender's application to RHS.* The Lender must submit the items outlined in §1980.353(e) of this subpart to RHS, in addition to items required in this section.

(h) *Notations and notices.* The Lender must notify RHS whether the loan and security can be properly assumed and transferred. The Lender shall assure that the conveyance instruments are properly filed, registered, or recorded, as appropriate. Upon completion of the transfer and assumption, the Lender must provide RHS a copy of the transfer and assumption agreement. The Lender may present the loan note guarantee to RHS if it desires RHS to note the transfer and assumption on the loan note guarantee. If a new note is obtained, it will also be attached to the loan note guarantee.

(i) *Interest assistance.* The original borrower's Master Interest Assistance Agreement may be transferred to an eligible transferee. Equity sharing, if any, owed by the transferor must be determined and collected at the time the loan is assumed and title to the property is transferred. See §1980.391.

(j) *Closing the transfer and assumption.* As soon as the Lender has obtained RHS approval, the Lender may proceed with closing the transaction. The closing must include, but need not be limited to, the proper execution and delivery of the conveyance and assumption documents, compliance with any legal requirements, and actions necessary to perfect the transfer and the required lien priority.

(k) *Loan note guarantee.* The existing loan note guarantee will continue to be in effect. RHS will note the transfer and assumption on the original loan note guarantee by completing the Assumption Agreement block by inserting the name of the assuming party.

(l) *Material furnished to RHS after closing.* Immediately after closing, the Lender must furnish to RHS:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) Any changes made in the provisions of the promissory note or security instruments.

(ii) That all conditions and requirements of paragraph (b) of this section have been met.

(iii) That the required insertions have been made per paragraph (h) of this section.

(m) *Notification of Lender.* The RHS approval official will review the proposed transfer and assumption and notify the Lender of the decision in writing. The request for transfer and assumption will be treated as an application for guaranteed loan assistance and will be handled in accordance with § 1980.353. The Lender may proceed with the transfer and assumption upon obtaining RHS approval.

§ 1980.367 Unauthorized sale or transfer of the property.

RHS consent is required to continue with the RHS guarantee in the event of a sale or transfer of the property in accordance with § 1980.366. If the property is transferred without RHS consent, the Lender must take one of the following actions:

(a) Obtain RHS consent if the conditions of § 1980.366 can be met;

(b) Satisfy the RHS guarantee and continue with the loan without the loan note guarantee; or

(c) Notify the borrower and the transferee of the default and service the loan in accordance with § 1980.371.

§§ 1980.368–1980.369 [Reserved]

§ 1980.370 Loan servicing.

RHS encourages Lenders to provide borrowers with the maximum opportunity to become successful homeowners. Lenders should provide sufficient servicing and counseling to meet the objectives of the loan. Loan servicing should be approached as a preventive action rather than a curative action. Prompt followup by the Lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases. The Lender shall perform those services which a reasonable and prudent

Lender would perform in servicing its own portfolio of loans that are not guaranteed.

(a) *Normal loan servicing.* The Lender is responsible for servicing the loan under the Lender Agreement and this subpart even if the Lender has engaged a third party to service the loan on its behalf. Normal servicing includes:

(1) Receiving all payments as they fall due and proper application of payments to principal and interest and escrow accounts for taxes (including special assessments) and insurance.

(2) Establishment and maintenance of an escrow account to pay real estate taxes and assessments and required hazard and flood insurance on the security. All escrow accounts must be fully insured by the Federal Deposit Insurance Corporation (FDIC). The Lender is responsible for maintaining escrow funds in a reasonable and prudent manner and for assuring that real estate taxes and assessments and required hazard and flood insurance are paid in a timely manner even if it requires advancing the Lender's own funds. The monthly payment may be adjusted when it is not adequate to meet established charges of the escrow account for the coming year. Escrow funds may be used only for the purpose for which they were collected.

(3) Obtaining compliance with the covenants, loan agreement (if any), security instruments, and any supplemental agreements and notifying the borrower in writing of any violations.

(b) *Other servicing requirements.* Other servicing requirements include taking actions to offset the effects of liens, probate proceedings, and other legal actions. The Lender's responsibility includes assuring that:

(1) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuild or otherwise acquire needed replacement collateral.

(2) The borrower complies with laws and ordinances applicable to the loan and the collateral.

(3) The borrower is not released of liability for the loan except as provided in Agency regulations.

§ 1980.371

(c) *Servicing options.* The Lender should make every effort to assist borrowers who are cooperative and willing to make a good faith effort to cure the delinquency. The Lender should consider the borrower's financial condition in attempting to work out repayment agreements. The Lender may revise the payment schedule of the loan on a temporary basis with the written concurrence of the borrower. Changes in the loan repayment such as reamortization of the unpaid balance within the remaining term of the loan may be done with prior written RHS concurrence. Reamortization shall not change the amount of the loan guarantee.

(d) *Lender reporting to RHS.* Reports on Lender servicing case loads and performance are required as follows:

(1) *Monthly report.* The Lender must prepare and submit a report in a manner prescribed by RHS identifying each borrower with a loan that is more than 30 days delinquent.

(2) *Annual report.* The Lender will submit an annual report indicating the status of each borrower account as of December 31 using the format prescribed by RHS.

(e) [Reserved]

§ 1980.371 Defaults by the borrower.

Default occurs when the borrower fails to perform under any covenant of the mortgage or Deed of Trust and the failure continues for 30 days. The Lender will negotiate in good faith in an attempt to resolve any problem. The borrower must be given a reasonable opportunity to bring the account current before any foreclosure proceedings are started.

(a) The Lender must make a reasonable attempt to contact the borrower if the payment is not received by the 20th day after it is due.

(b) The Lender must make a reasonable attempt to arrange and hold an interview with the borrower for the purpose of resolving the delinquent account before the loan becomes 60 days delinquent. Reasonable effort consists of not less than one letter sent to the borrower at the property address via certified mail or similar method which the borrower refuses to accept or fails to respond.

7 CFR Ch. XVIII (1-1-09 Edition)

(c) If the Lender is unable to make contact with the borrower, the Lender must determine whether the property has been abandoned and the value of the security is in jeopardy before the account becomes two payments delinquent.

(d) When the loan becomes three payments delinquent, the Lender must report borrower delinquencies to credit repositories and make a decision with regard to liquidation of the account. The Lender may proceed with liquidation of the account unless there are extenuating circumstances.

§ 1980.372 Protective advances.

Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument. Protective advances are advances made for expenses of an emergency nature necessary to preserve or protect the physical security. Attorney fees are not a protective advance. The Lender will not make protective advances in lieu of an additional loan. In order to assure that a protective advance over \$500 will be included in the loss payment, Lenders are encouraged to obtain prior RHS approval.

§ 1980.373 [Reserved]

§ 1980.374 Liquidation.

If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will notify RHS of the decision to liquidate. Initiation of foreclosure begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale. Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law. When there is a legal delay (such as bankruptcy), foreclosure must be started within 60 days after it becomes possible to do so.

(a) *Expeditious liquidation.* Once the decision to liquidate has been made, the Lender must proceed in an expeditious manner. Lenders must exercise

due diligence in completing the foreclosure process. Lenders are expected to complete foreclosure within the time frames that are reasonable for the state in which the property is located.

(b) *Maximum collection.* The Lender is expected to make the maximum collection possible on the indebtedness. The Lender will consider the possibility of recovery of any deficiency apart from the acquisition or sale of collateral. The Lender will submit a recommendation on such recovery considering the borrower's assets and ability to pay, prospects of future recovery, the costs of pursuing such recovery, recommendation for obtaining a judgment, and the collectability of a judgment in view of the borrower's assets.

(c) *Allowable liquidation costs.* Certain reasonable liquidation costs (costs similar to those charged for like services in the area) will be allowed during the liquidation process. No in-house expenses of the Lender will be allowed including, but not limited to, employee salaries, staff lawyers, travel, and overhead. Liquidation costs are deducted from the gross sales proceeds of the collateral when the Lender has conducted the liquidation.

(d) *Servicing plan.* The Lender must submit a servicing plan to RHS when the account is 90 days delinquent and a method other than foreclosure is recommended to resolve delinquency. RHS encourages Lenders and delinquent borrowers to explore an acceptable alternative to foreclosure to reduce loss and expenses of foreclosure. Although prior approval is not required in all cases, the Agency may reject a plan that does not protect the Government's interest.

(1) *Continuation with the borrower.* The Lender may continue with the borrower when a clear and realistic plan to eliminate the delinquency is presented. The Lender must fully document the borrower's prospects of success and make this information available to RHS upon request.

(2) *Voluntary liquidation.* RHS may accept the Lender's plan to use voluntary liquidation when the plan clearly addresses the responsibilities of the parties, the Lender maintains oversight of the progress of the sale, the property is listed for sale at a price in

line with its market value (if there is not already a bona fide purchaser for the dwelling), and the expected cost to the Government is the same as or less than the cost of foreclosure.

(3) *Deed-in-lieu of foreclosure.* The Lender may take a deed-in-lieu of foreclosure from the borrower when it will not result in a cost to the Government in excess of that expected for foreclosure.

(4) *Other methods.* RHS may accept a proposal submitted by the Lender that is not specifically addressed in but is consistent with the provisions of this subpart if the Lender fully documents how the proposal will result in a savings to the Government.

(e) *Handling shared equity.* Interest assistance payments made under § 1980.390 of this subpart will not be subject to shared equity if the loan is liquidated in accordance with the Lender Agreement unless:

(1) The property is sold at or prior to foreclosure for an amount exceeding the Lender's unpaid balance and costs of foreclosure, or

(2) A junior lienholder takes over the Lender's loan.

§ 1980.375 Reinstatement of the borrower's account.

The Lender may reinstate an account when all delinquent payments and any funds that were advanced to pay authorized expenses are paid or as required under state law. When the Lender wishes to consider other offers by the borrower to bring the account current, the Lender must obtain RHS concurrence.

§ 1980.376 Loss payments.

Settlement of the guarantee will be processed in accordance with this section.

(a) *Loss payment.* Loss payments will be made within 60 days of the Lender's properly filed claim. The Lender must submit its loss claim within 30 calendar days of loan liquidation. The claim may include interest on the unpaid principal accrued to final loss settlement. RHS will pay interest within the limits of the guarantee to the date the claim is paid when the Lender promptly and properly files the claim.

(1) *Determination of loss payment.* To calculate the loss payment, first determine the unpaid debt by adding the unpaid principal and interest on the loan and the unpaid balance for principal and interest on authorized protective advances. The net proceeds from the property will be first applied to the unpaid debt. Any other proceeds recovered by the Lender from other sources shall also be applied to the total unpaid debt. Determination of net proceeds will be different depending on which of the following circumstances are involved.

(i) If, at liquidation, title to the property is conveyed to a bona fide third-party purchaser, then final loss payment will be based on the net sales proceeds received for the property.

(ii) If, at liquidation, title to the property is conveyed to the Lender, then the Lender must prepare and submit a property disposition plan to RHS for RHS concurrence. The plan will address the Lender's proposed method for sale of the property, the estimated value and minimum sale price, itemized estimated costs of the sale, and any other information that could impact the amount of loss on the loan. The Lender is allowed up to 6 months from the date the property is acquired to sell the property. Upon the Lender's written request, RHS will authorize one extension not to exceed 30 days to close the sale of a purchase offer accepted near the end of the 6-month period. Net proceeds will be based on the net proceeds received for the property when the sale is conducted in accordance with the plan as approved by RHS. If no sale offer is accepted within the 6-month period, then the RHS approval official will obtain and use a liquidation value appraisal of the property. When an appraisal is obtained, the amount of the net proceeds from the security is then determined by subtracting a cost factor, which is found in exhibit D of FmHA Instruction 1980–D (available in any RHS office), from the current market value.

(iii) If a deficiency judgment is obtained, the Lender must enforce the judgment against the borrower before loss settlement if the current situation provides a reasonable prospect of recovery. A loss payment will be made

when the Lender holds a deficiency judgment but there are not current prospects of collection, even if there may be in the future.

(2) *Payment procedure.* RHS will pay losses on the loan according to the terms of the loan note guarantee unless RHS has determined there is cause for reduction of the loss amount. See §1980.377 for future recovery by the Lender.

(i) If there is no dispute between RHS and the Lender regarding the amount of the loss and the Lender's eligibility for payment of loss, RHS will pay the loss within the limits of the guarantee.

(ii) If RHS and the Lender do not agree on the amount of the loss, or RHS has determined that part of the loss is not payable to the Lender under the terms of the loan note guarantee, RHS will pay the undisputed portion. The disputed portion of the claim will be treated as an adverse decision and the Lender may appeal.

(iii) When RHS has cause to believe that Lender fraud or other lender actions negating the guarantee exist, no loss payment may be made unless the situation is resolved.

(3) The RHS approval official will conduct an audit of the account and review the loan in its entirety to determine why the loan failed and whether any reason exists for reducing or denying the loss claim. This information will be documented in the RHS casefile.

(4) If a Lender's loss claim is denied or reduced, the RHS approval official will notify the Lender of all of the reasons for the action within 10 days of the decision and the Lender may appeal in accordance with §1980.399 and subpart B of part 1900.

(5) The RHS approval official is authorized to approve loss payments in amounts of up to 50 percent of his/her delegated loan approval authority in accordance with exhibit D of FmHA Instruction 1901–A (available in any RHS office).

(b) *Denial or reduction of loss claims.* The RHS approval official will fully document any loss claim which is denied or reduced including an analysis of how the amount of the reduction was determined. A connection must be made between the Lender's action or

failure to act and the loss amount on the loan. The amount of loss occasioned by such action will be established. This information will be made available to the Lender upon request. A Lender's loss claim may be denied or reduced by RHS when:

(1) The Lender has committed fraud. (Denial of claim.)

(2) The Lender claims items not authorized under RHS regulations. (Reduced by amount of unauthorized claim.)

(3) The Lender violated usury laws. (Reduction for amount of loss caused by the violation.)

(4) The Lender failed to obtain required security or maintain the security position. (Reduction for loss attributed to failure.)

(5) Loan funds were used for unauthorized purposes. (Reduction by unauthorized amount.)

(6) The Lender was negligent in loan servicing. Negligent servicing is a failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes a failure to act, a failure to act in a timely manner, or acting in a manner contrary to that in which a reasonably prudent Lender would act. (Reduction for loss amount attributable to Lender negligence.) Examples of negligent servicing include:

(i) A failure to contact the borrower in a timely manner when the borrower's account goes into default.

(ii) A failure to pay real estate taxes or hazard insurance when due.

(iii) A failure to notify RHS within required time limits when the borrower defaults on the loan.

(iv) A failure to request loan subsidy when the borrower was eligible for loan subsidy and loan subsidy was available (subsidized loans only).

(v) A failure to protect security during the liquidation phase.

(7) The Lender delayed filing the loss claim. (Reduction in claim for interest accrued because the claim was not filed.)

§ 1980.377 Future recovery.

The proceeds of any amounts recovered shall be shared in proportion to the amount of loss borne between RHS

and the Lender. Although the Lender's actual loss may be different than the amount on which loss settlement was based, the proportion of recovery sharing must be based on the loss percentage upon which the loss payment calculation was based.

§§ 1980.378–1980.389 [Reserved]

§ 1980.390 Interest assistance.

In order to assist low-income borrowers in the repayment of the loan, RHS is authorized to provide interest assistance payments subject to the availability of funds. Regardless of what date a borrower's loan payment is due each month, interest assistance payments will be made by RHS directly to the Lender on or before the 15th day of the month in which the borrower's payment is due.

(a) *Policy.* It is the policy of RHS to grant interest assistance on guaranteed loans to low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities as long as the borrower remains eligible for payments when funds are available for interest assistance. Interest assistance must be established for the borrower at the time the loan guarantee is authorized.

(b) *Processing interest assistance agreements.* The Lender will process the interest assistance agreement and submit it to RHS for approval.

(1) RHS will reimburse the Lender in the amounts authorized in exhibit D of FmHA Instruction 1980-D (available in any RHS office) for the cost of processing the agreement. The fee will be paid upon receipt of a valid agreement which has been coded as requiring a processing fee payment. The processing fee is payable when:

(i) A new agreement is made with the borrower except at the time of loan closing.

(ii) The borrower had an agreement for the previous year and a new agreement is made for the current year.

(iii) The borrower is eligible for but not presently on interest assistance and enters into a new interest assistance agreement.

(iv) The borrower has a change in circumstances which requires a revision to the current agreement. When the

change in circumstances results in an agreement with less than 90 days remaining, the agreement for the subsequent year will be prepared at the same time. This action is considered one agreement.

(2) A processing fee will not be paid when the revision to an existing agreement is required due to an error on the part of the Lender or the borrower.

(c) *Amount of interest assistance.* (1) The amount of interest assistance granted will be the difference between the monthly installment due on the promissory note eligible for interest assistance and the amount the borrower would pay if the note were amortized at the rate corresponding to the borrower's income range as outlined in the master interest assistance agreement.

(2) The basis for the amount of interest assistance for each loan is determined by the amount of interest assistance authorized to the Agency as shown in exhibit D of FmHA Instruction 1980-D (available in any RHS office) and the note interest rate.

(3) A borrower receiving a loan in a high cost area will be granted an additional 1 percent interest assistance in order to assist the borrower up to the maximum rate in exhibit D of FmHA Instruction 1980-D (available in any RHS office).

(i) The Administrator may designate an area as a high cost area for interest assistance purposes. Such designation may be granted when the State Director makes a written request for it and provides documentation that low-income borrowers in the area could not afford to purchase a dwelling under the interest assistance table in exhibit D of FmHA Instruction 1980-D (available in any RHS office). The area must also be designated by HUD as a high cost area. The amount of additional interest assistance for high cost areas is 1 percent; however, in no case will more interest assistance be granted than the amount necessary to reach the lowest floor rate in exhibit D of FmHA Instruction 1980-D (available in any RHS office).

(ii) The change in a designation to (or from) a high cost area will not affect existing loans. An individual's loan eligibility for high cost designa-

tion is determined at the time of issuance of the conditional commitment for loan guarantee.

(d) *Shared equity.* Prior to loan closing, the Lender will advise the applicant that interest assistance is subject to equity sharing.

(e) *Eligibility.* To be eligible for interest assistance, a borrower must personally occupy the dwelling and must meet the following additional requirements:

(1) *Initial loans.* Interest assistance may be granted at the time the loan note guarantee is issued, or an assumption is processed in accordance with § 1980.366, when:

(i) The borrower's adjusted income at the time of loan guarantee approval did not exceed the applicable low-income limit, the loan guarantee was funded from interest assisted guaranteed loan funds, and a master interest assistance agreement was completed at closing if the borrower is ever to receive interest assistance.

(ii) The borrower's net family assets do not exceed the maximum allowable amount as per exhibit D of FmHA Instruction 1980-D (available in any RHS office) unless an exception is authorized. The calculation of net family assets will exclude the value of the dwelling and a minimum adequate dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and personal automobiles and the debts against them. The Lender may request an exception at the time the initial application is submitted to RHS for a loan guarantee. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest assistance.

(iii) The loan was approved as a subsidized guaranteed loan on or after April 17, 1991.

(iv) The amount of interest assistance will be \$20 or more per month in accordance with the provisions of paragraph (c)(1) of this section. Interest assistance in amounts of less than \$20 per month will not be granted.

(2) *Existing loans.* Interest assistance may be granted at any time after loan closing if:

(i) The requirements of paragraphs (e)(1)(i), (e)(1)(iii), and (e)(1)(iv) of this section are met.

(ii) The borrower's adjusted annual income does not exceed the low-income limit.

(iii) The borrower requests interest assistance through the Lender or the Lender determines that interest assistance is needed to enable the borrower to repay the loan.

(iv) The Lender processes the interest assistance agreement and submits it to RHS for approval.

(f) *Processing interest assistance.* The Lender will process interest assistance agreements in accordance with this section. The interest assistance agreement will be executed by the Lender and borrower and forwarded to RHS for approval.

(1) *Amount of interest assistance.* The amount of interest assistance for which a borrower is eligible will be determined by use of the interest assistance agreement as outlined in paragraph (c) of this section.

(i) *Determination of income.* The Lender is responsible for determining the borrower's annual and adjusted annual income as outlined in §§1980.347 and 1980.348 of this subpart. Income of all persons occupying the dwelling will be verified in accordance with §1980.347 of this subpart.

(ii) *Effective period.* Annual interest assistance agreements will be for a 12-month period.

(2) *Interest assistance agreements.* The master interest assistance agreement will be executed for each qualifying loan at loan closing provided funds are available for interest assistance at the time the guarantee is issued. This agreement establishes the conditions and maximum amounts of interest assistance for the life of the loan. Each year, an annual interest assistance agreement will be used to determine the amount of interest assistance for the coming 12 months.

(i) The Lender will determine the borrower's adjusted annual income, document the calculations, and complete the interest assistance agreement form.

(ii) The borrower will review the interest assistance agreement form and sign the form signifying that all information is correct as shown.

(iii) If the information contained on the interest assistance agreement appears correct, RHS will approve the agreement and make monthly payments to the Lender on behalf of the borrower.

(iv) When the borrower's income is within the low-income limits but the provisions of paragraphs (e)(1)(ii) or (e)(1)(iv) of this section preclude granting interest assistance, the master interest assistance agreement must be executed if the borrower desires to be considered for interest assistance at a later date due to a change in circumstances.

(g) *Interest assistance modification.* A change in the borrower's circumstances after the effective date of the Annual Interest Assistance Agreement will be handled as follows:

(1) *RHS required modifications before expiration.* The borrower is responsible for reporting any increases in income exceeding \$100 per month to the Lender. The Lender is not responsible for monitoring the borrower's income. The Lender must process a revised interest assistance agreement when a reported increase in the borrower's income results in the need for less interest assistance in accordance with paragraph (c) of this section.

(2) *Additional interest assistance before expiration.* The borrower may request and the Lender may process a modification of the interest assistance agreement and submit the modified agreement to RHS when:

(i) The borrower's adjusted annual income decreases by more than \$100 per month;

(ii) The interest assistance calculation per paragraph (c) of this section indicates that the borrower is eligible for an additional \$20 interest assistance per month; and

(iii) There are interest assistance funds available if the amount needed by the borrower exceeds the initial floor rate established at the time the loan was closed per paragraph (c) of this section.

(3) *Other changes in the borrower's circumstances.* When one coborrower has

left the dwelling, interest assistance based on the remaining coborrower's income may be extended if:

- (i) The remaining coborrower is occupying the dwelling, owns a legal interest in the property, and is liable for the debt;
- (ii) The remaining coborrower certifies as to who lives in the house;
- (iii) Separation is not due only to work assignment or military orders; and
- (iv) The remaining coborrower is informed and agrees that should the coborrower begin to live in the dwelling, that coborrower's income will then be counted toward annual income and interest assistance may be reduced or canceled.

(4) *Effect of modification.* An interest assistance agreement modified as per paragraph (g)(1), (g)(2), or (g)(3) of this section is valid for the remainder of the agreement period.

(5) *Correction of interest assistance agreement.* When an error by RHS or the Lender resulted in too little interest assistance being granted, a corrected agreement will be prepared effective the date of the error if the error results in granting \$20 or more per month less interest assistance than the borrower was eligible to receive. The Lender must return any overpayment made by the borrower unless an agreement is reached to apply the funds to the loan as an extra payment.

(h) *Eligibility review.* Borrowers receiving interest assistance will be reviewed annually within 30 to 60 days prior to the anniversary date of the loan. All existing agreements must be reviewed and processed for the upcoming 12 months during the review period. Interest assistance will not be renewed if the amount that the borrower qualifies for is less than \$20 per month.

(1) The Lender will obtain written verification of the income of each borrower and all adult members of the borrower's household and conduct the review.

(i) *Borrower responsibility.* The borrower will:

- (A) Report the income of each adult member of the household to the Lender;
- (B) Assure that each household member has provided sufficient information

on that person's income for the Lender to conduct the review; and

(C) Cooperate in the Lender's efforts to verify income.

(ii) [Reserved]

(2) *Processing interest assistance renewals not reviewed during the review period.* The Lender may process interest assistance renewals not completed during the review period as follows:

(i) The amount of interest assistance will be based on the borrower's current annual income.

(ii) The effective date will be:

(A) The expiration period of the previous interest assistance agreement if the RHS approval official determines failure to renew was the fault of RHS or the Lender.

(B) The next payment due date following approval in all other cases.

(3) *Interest assistance form.* Interest assistance payments will not be made after the expiration date unless RHS receives and approves a new interest assistance agreement form.

(i) *Cancellation of interest assistance.*

(1) An existing interest assistance agreement will be canceled under the following circumstances:

(i) When the borrower has never occupied the dwelling, the interest assistance will be canceled as of the date of issuance of the guarantee. The Lender will refund all interest assistance payments to RHS.

(ii) The cancellation will be effective on the date on which the earliest action occurs which causes the cancellation or the date the Lender became aware of the situation if the date cannot be determined when:

(A) The borrower ceases to occupy, sells, or conveys title to the dwelling.

(B) The borrower has received improper interest assistance and a corrected agreement will not be submitted.

(C) The borrower has had an increase in income and is no longer eligible for interest assistance.

(D) The security is acquired by the Lender.

(E) The Lender formally declares the loan to be in default and accelerates the loan.

(2) [Reserved]

(j) *Overpayment.* When the Lender becomes aware of circumstances that

have resulted in an overpayment of interest assistance for any reason, except as provided in paragraph (k) of this section, the following actions will be taken:

(1) The Lender will immediately notify RHS.

(2) The borrower will be notified and the interest assistance agreement will be corrected.

(3) A repayment agreement acceptable to RHS will be reached.

(k) *Unauthorized use of loan funds.* When RHS becomes aware that the Lender allowed loan funds to be used for unauthorized purposes, interest assistance paid on said amounts will be promptly repaid by the Lender. The Lender may work out a repayment agreement with the borrower but is expected to make every effort to minimize the adverse impact on the borrower's repayment ability.

(l) *Appeals.* All applicants/borrowers and Lenders may appeal adverse determinations in accordance with §1980.399 when RHS denies, reduces, cancels, or refuses to renew interest assistance.

(m) *Reinstatement of interest assistance.* The RHS approval official may authorize reinstatement of the borrower's interest assistance if it was canceled because the loan was accelerated and if the acceleration was withdrawn with RHS approval.

§ 1980.391 Equity sharing.

The policy of RHS is to collect all or a portion of interest assistance granted on a guaranteed RH loan when any of the events described in paragraph (a) of this section occur, if any equity exists in the security.

(a) *Determining the amount of shared equity.* The RHS approval official will calculate shared equity when a borrower's account is settled by payment-in-full (including refinancing) of the outstanding indebtedness, the transfer of title, or when the borrower ceases to occupy the property. The calculation of shared equity when the account is in liquidation will be handled in accordance with §1980.374(e).

(1) *How to calculate.* The amount of shared equity will be based on the amount of interest assistance granted on the loan, the appreciation in property value between the closing date of

the loan and the date the account is satisfied or acquired by the Lender via liquidation action, the period of time the loan is outstanding, the amount of original equity the borrower has in the property, and the value of capital improvements to the property. Shared equity will be the lesser of the interest assistance granted or the amount of value appreciation available for shared equity. Value appreciation available for shared equity means the market value of the property less all debts secured by prior liens, sales expenses, any original borrower equity, principal reduction, and value added by any capital improvements.

(i) *Market value.* Market value of the property as of the date the loan is to be paid in full or the date the borrower ceases to occupy and will be documented by one of the following:

(A) A sales contract which reasonably represents the fair market value based on the Lender's and RHS approval official's knowledge of the property and the area.

(B) Lender's appraisal when the loan will be refinanced provided the appraisal reasonably represents the fair market value.

(C) If the items listed in either paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this section are not available, another current appraisal, if readily available, when the appraiser meets the qualifications of §1980.334.

(D) When the account is being paid off from insurance proceeds, the most recent appraisal available if the Lender or RHS can document that it represents an accurate indication of the value at the time the dwelling was damaged or destroyed. If not, the best information available will be used to determine the market value. The RHS approval official will interview the borrower to determine the extent of improvements, if any, and the general condition of the property at the time of loss. The amount of the insurance payment is generally a good indication of value; however, tax records or comparable sales will be considered.

(E) RHS appraisal, with prior approval of the State Director.

(ii) *Prior liens.* Prior liens refers to the amount of liens that are prior to the Lender's liens and include, but may

not be limited to, prior mortgages, and real estate taxes and assessments levied against the property.

(iii) *Sale/refinancing expenses.* Sale/refinancing expenses include, but are not limited to, expenses commonly associated with the sale or refinancing of real estate that are not reimbursed, such as sales commissions, advertising costs, recording fees, pro rata taxes, points based on the current interest rate, appraisal fees, transfer tax, deed preparation fee, loan origination fee, etc. In refinancing situations, only those expenses necessary to finance the amount of the current RHS debt are allowed. Shared equity may be calculated using estimated expenses if actual expenses cannot be obtained and the RHS approval official is satisfied with the estimated amount and the prorating of the expenses are accurate for this transaction.

(iv) *Original borrower equity.* Original equity consists of a contribution by the borrower that reduces the amount of the loan below the market value. The contribution may be in the form of cash and/or value of the lot if the home was constructed on the borrower's property.

(v) *Capital improvements.* Capital improvements will be considered to the extent that they do not exceed market value contribution as indicated by a sales comparison analysis. Generally, the value added by improvements will be the difference in market value at the time of sale and market value without capital improvements. Cost of the improvement will not be considered, only contribution to value. Maintenance cost and replacement of short-lived depreciable items are normal expenses associated with home ownership and are not considered capital improvements.

(2) *Other considerations.* (i) *Overpayments of interest assistance.* When RHS has overpaid interest assistance and the overpaid amounts remain uncollected at the time shared equity is calculated, the overpaid amount will be added to shared equity.

(ii) *Multiple loans.* When a borrower has more than one loan and elects to pay only some of the loans, shared equity will not be calculated unless the remaining loan is not subject to shared

equity. Shared equity will be calculated when the account is paid in full taking into consideration all of the interest assistance granted on the account.

(b) *Miscellaneous provisions—(1) Changes in terms.* Shared equity will not be calculated when an account is reamortized.

(2) *Junior liens.* Junior liens are not considered in the shared equity calculation. In the event a junior lienholder forecloses, the RHS approval official will calculate shared equity before providing the lienholder with a pay-off figure, which is in addition to any amounts still due the Lender on the loan in the same manner as paragraph (a) of this section.

(c) *Affordable housing proposals.* Shared equity under an affordable housing innovation (such as limited equity or a state or county sponsored shared equity) will be calculated in accordance with this subpart unless prior written approval is obtained from RHS. Proposals that deviate from this subpart must be reviewed and approved in the National office prior to issuance of the loan note guarantee.

§ 1980.392 Mortgage Credit Certificates (MCCs) and Funded Buydown Accounts.

(a) *MCCs.* MCCs are authorized under the Tax Reform Act of 1986 and allow the borrower to receive a Federal tax credit for a percentage of their mortgage interest payment. They may be used by RHS guaranteed RH borrowers to improve their repayment ability for the loan. MCCs impact on the borrower's tax liability. MCCs may be used with interest assisted loans when the amount of the tax credit is based on the amount of interest actually paid by the borrower. MCCs are subject to shared equity of a portion of any "gain" realized on the property when sold within 10 years after purchase. If the loan is also an RHS interest assisted loan, RHS shall receive priority for shared equity repayment. Income taxes are complex issues; RHS employees and Lenders are not expected to be able to identify all issues impacting the borrower's taxes. Lenders should encourage borrowers to consult with a tax advisor.

(1) When the Lender is participating in an MCC program the amount of the tax credit is considered as an additional resource available for repayment of the loan when the credit is taken on a monthly basis from withholding.

(2) The Lender will submit a copy of the MCC and a copy of the applicant's Form IRS W-4, "Employee's Withholding Allowance Certificate," along with the other materials for the loan guarantee request. The amount of tax credit is limited to the applicant's maximum tax liability.

(i) The MCC must show the rate of credit allowed.

(ii) The Form IRS W-4 must reflect that the borrower is taking the tax credit on a monthly basis.

(iii) The Lender will certify that the borrower has completed and processed all of the necessary documents to obtain the tax credit in accordance with this section.

(b) *Funded buydown accounts.* A funded buydown account is a prepaid arrangement between a builder or a seller and a Lender that is designed to improve applicant's repayment ability. Funded buydown accounts are permitted when the Lender obtains prior RHS concurrence. RHS will consider buydown accounts when there are compensating factors which indicate the borrower's ability to meet the expected increases in loan payment. The seller, Lender or other third party must place funds in an escrow account with monthly releases scheduled directly to the Lender to reduce the borrower's monthly payment during the early years of the loan. The maximum reduction which may be considered is 2 percent below the note rate, even though the actual buydown may be for more. Reductions in buydown assistance may not result in an increase in the interest rate paid by the borrower of more than 1 percent per year. The borrower shall not be required to repay escrowed buydown funds. Funds must be escrowed with a state or federally supervised Lender. Funded buydown accounts must be fully funded for the buydown period. Buydown periods must be at least 12 months for each 1 percent of the buydown.

§§ 1980.393–1980.396 [Reserved]

§ 1980.397 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement, or provision, or failure to take action in the case of an omission would adversely affect the Government's financial interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the Assistant Administrator for Housing. Requests for exception must be made in writing accompanied by the borrower's casefile in cases involving specific borrowers and supported with documentation to explain the adverse effect, propose alternative courses of action, and to show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1980.398 Unauthorized assistance and other deficiencies.

(a) *Unauthorized assistance.* Unauthorized assistance includes, but is not limited to, issuance of a loan note guarantee when the borrower was not eligible for the loan or the borrower was eligible but the loan was not made for authorized purposes. Unauthorized assistance in the form of interest assistance is discussed in § 1980.390.

(b) *Initial determination of unauthorized assistance.* The reasons for unauthorized assistance being received by the Lender may include:

(1) Submission of false or inaccurate information by the Lender;

(2) Submission of false or inaccurate information by the borrower;

(3) Error by RHS personnel; or

(4) Error by the Lender.

(c)–(d) [Reserved]

(e) *Categories of unauthorized assistance—(1) Minor deficiency.* A minor deficiency is one that does not change the eligibility of the borrower, the eligibility of the property, or amount of the loan. Such incidents will be brought to the Lender's attention in writing. Examples of minor deficiencies include

improperly completed builder certifications, use of an outdated credit report, or use of an outdated income verification. Minor deficiencies also include those significant deficiencies when the Lender is willing and able to correct the problem such as obtaining flood insurance for a dwelling located in a flood hazard area and assuring the escrow amount is sufficient.

(2) *Significant deficiency.* A significant deficiency is one that creates a significant risk of loss to the Government, or involves acceptance of a borrower or property not permitted by Agency regulations. Such cases may result in probation or withdrawal of the Lender's approval for program participation. Examples of significant deficiencies include gross miscalculation of income, acceptance of property that is severely deficient of the required standards, missing builder certifications, and construction changes that materially affect value without proper change orders.

(3) *Fraud or misrepresentation.* A deficiency that involves an action by the Lender to misrepresent either the financial capacity of the borrower or the condition of the property being financed may, in addition to any criminal and civil penalties, result in a withdrawal of RHS approval, or debarment. Examples of this type of deficiency include falsified Verifications of Employment, false certifications, reporting a delinquent loan as being current, and omitting conditions relating to the health and safety of a property.

(f) *Borrower noncompliance.* When the borrower receives unauthorized assistance due to an error or oversight, the Lender may continue with the guaranteed loan. More serious violations will be viewed on a case-by-case basis by the National office.

(g) *RHS error oversight.* When the borrower receives unauthorized assistance solely due to an error or oversight by RHS, the Lender may continue with the guaranteed loan.

§ 1980.399 Appeals.

The borrower and the Lender respectively can appeal an RHS administrative decision that directly and adversely impacts them. Decisions made by the Lender are not covered by this

paragraph even if RHS concurrence is required before the Lender can proceed. Appeals will be conducted in accordance with the rules of the National Appeals Division, USDA.

(a) *Appealable decisions.* (1) The borrower and the Lender must jointly execute the written request for an alleged adverse decision made by RHS. The Lender need not be an active participant in the appeal process.

(2) The Lender only may appeal cases where RHS has denied or reduced the amount of a loss payment to the Lender.

(b) *Nonappealable decisions.* (1) The Lender's decision as to whether to make a loan is not subject to appeal.

(2) The Lender's decision to deny servicing relief is not subject to appeal.

(3) The Lender's decision to accelerate the account is not subject to appeal.

§ 1980.400 [Reserved]

Subpart E—Business and Industrial Loan Program

SOURCE: 52 FR 6501, Mar. 4, 1987, unless otherwise noted.

§ 1980.401 Introduction.

(a) Direct Business and Industry (B&I) loans are disbursed by the Agency under this subpart. B&I loan guarantees are to be processed and serviced under the provisions of subparts A and B of part 4279 and subpart B of part 4287 of this title. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to relatives, or business or close personal associates, is subject to the provisions of part 1900 subpart D of this chapter. Applicants for this assistance are required to identify any known relationship or association with any Agency employee.

(b) The purpose of the B&I program is to improve, develop or finance business, industry and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality

loans which will provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to "bail out" lenders having such loans.

(c) This subpart and its appendices (especially appendix I and appendix K) also contain regulations for Drought and Disaster (D&D) and Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100-387) and section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101-82). D&D loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and are limited to a guarantee of principal only. DARBE loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and within certain parameters guarantee both principal and interest.

(d) The B&I loan program is administered by the Administrator through a State Director serving each State. The State Director is the focal point for the program and the local contact person for processing and servicing activities, although this subpart refers in various places to the duties and responsibilities of other FmHA or its successor agency under Public Law 103-354 employees.

(e) Throughout this subpart there appear Administrative provisions for the State Director, District Director, and County Supervisor. These provisions establish the internal duties, responsibilities and procedures to carry out the requirements of the program. These provisions are identified as "Administrative" and follow appropriate sections of this subpart.

(f) This subpart and its appendices also contains regulations for Business and Industry Disaster (BID) loans under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102-368. This program provides B&I guarantees for loans needed as a result of natural disasters. Some of the requirements of this subpart are waived or altered for BID loans. The waivers and alterations are provided in § 1980.498 of this subpart.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 4, Jan. 3, 1989; 54 FR 42483, Oct. 17, 1989; 55 FR 19245, May 8, 1990; 57 FR 45969, Oct. 5, 1992; 58 FR 229, Jan. 5, 1993; 61 FR 67633, Dec. 23, 1996]

§ 1980.402 Definitions.

(a) The following general definitions are applicable to the terms used in this subpart. *Adjusted tangible net worth.* Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Allowed tangible asset appreciation. The difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Area of high unemployment. An area in which a B&I loan guarantee can be issued, consisting of a county or group of contiguous counties or equivalent subdivisions of a State which, on the basis of the most recent 12-month average or the most recent annual average data, has a rate of unemployment 150 percent or more of the national rate. Data used must be those published by the Bureau of Labor Statistics, U.S. Department of Labor.

Biogas. Biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. A borrower may be a cooperative organization, corporation, partnership, trust or other legal entity organized and operated on a profit or nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized tribal group; a municipality, county or other political subdivision of a State; or an individual. Such borrower must be engaged in or proposing to engage in improving, developing or financing business, industry and employment and improving the economic and environmental climate in rural areas, including pollution abatement and control.

Business and Industry Disaster Loans. Business and Industry loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102-368. These guaranteed loans cover costs arising from the direct consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a direct consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992.

Commercially available. Energy projects utilizing technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Community facilities. For the purposes of this subpart, community facilities are those facilities designed to aid in the development of private business and industry in rural areas. Such facilities include, but are not limited to, acquisition and site preparation of land for industrial sites (but not for improvements erected thereon), access streets and roads serving the site, parking areas extension or improvement of community transportation systems serving the site and utility extensions all incidental to site preparation. Projects eligible for assistance under Subpart A of Part 1942 of this chapter are not eligible for assistance under this subpart.

Development cost. These costs include, but are not limited to, those for acquisition, planning, construction, repair or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land easements, rights of way; payment of startup operating costs, and interest during the period before the first principal payment becomes due, including interest on interim financing.

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized by section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101-82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See this subpart and its appendices, especially Appendix K, containing additional regulations for these loans.

Drought and Disaster Guaranteed Loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100-387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters.

Energy projects. Commercially available projects that produce or distribute energy or power and/or projects that produce biomass or biogas fuel.

Farmers Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Hurricane Andrew. A hurricane that caused damage in southern Florida on August 24, 1992, and in Louisiana on August 26, 1992.

Hurricane Iniki. A hurricane that caused damage in Hawaii on September 11, 1992.

Letter of conditions. Letter issued by Rural Development under Public Law 103-354 to a borrower setting forth the conditions under which Rural Development will make a direct (insured) loan from the Rural Development Insurance Fund.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Microburst wind. A violently descending column of air associated with a thunderstorm which causes straight-line wind damage.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Public body. A municipality, political subdivision, public authority, district, or similar organization.

Qualified Intellectual Property. Trademarks, patents or copyrights included on current (within one year) audited balance sheets for which an audit opinion has been received that states the financial reports fairly represent the values therein and the reported value has been arrived at in accordance with GAAP standards for valuing intellectual property. The supporting work papers must be satisfactory to the Administrator.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Seasoned loan. A loan which:

(1) Has a remaining principal guaranteed loan balance of two-thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(2) Is in compliance with all loan conditions and B&I regulations.

(3) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(4) Is secured by collateral which is determined to be adequate to ensure there will be no loss on the B&I guaranteed loan.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin

Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordinated owner debt. Debt owed by the borrower to one or more of the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I loan exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower for the benefit of the borrower's business. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all aggregate B&I loan exposure has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I loan exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the rate of the debt repayment schedule in effect for the Agency's aggregate B&I loan exposure.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP), plus qualified intellectual property.

Typhoon Omar. A typhoon that caused damage in Guam on August 28, 1992.

Working capital. The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

§ 1980.403

(b) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under generally accepted accounting principles (GAAP).

[71 FR 33185, June 8, 2006]

§ 1980.403 Citizenship of borrowers.

Loans to individuals will be made or guaranteed only to those who are citizens of the United States or reside in the United States after being legally admitted for permanent residence. At least 51 percent of the outstanding interest in any corporation or organization-type applicant must be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 1980.404 [Reserved]

§ 1980.405 Rural areas.

The business financed with a B&I loan must be located in a rural area. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area. Cooperatives that are headquartered in a non-rural area may be eligible for a B&I loan if the loan is used for a project or venture that is located in a rural area. Rural areas are any areas other than:

(a) A city or town that has a population of greater than 50,000 inhabitants; and

(b) The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

[67 FR 78130, Dec. 23, 2002]

§§ 1980.406–1980.410 [Reserved]

§ 1980.411 Loan purposes.

Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(a) *Private entrepreneurs.* Loans may be for improving, developing or financing business, industry and employment and improving the economic and envi-

7 CFR Ch. XVIII (1–1–09 Edition)

ronmental climate, including pollution and abatement control, of rural areas, and may include but not be limited to:

(1) Business and industrial acquisitions, construction, conversion, enlargement, repair, modernization of development cost.

(2) Purchasing and development of land, easements, rights-of-way, buildings, facilities, leases or materials.

(3) Purchasing of equipment, leasehold improvements machinery or supplies.

(4) Pollution control and abatement including those in connection with farming and ranching operations.

(5) Transportation services incidental to industrial development.

(6) Startup costs and working capital.

(7) The financing of housing development sites located in open country or cities, towns or villages with populations not in excess of those eligible for FmHA or its successor agency under Public Law 103–354 rural housing loans, provided the community demonstrates a need for additional housing to prevent a loss of jobs in the area, or to house families moving to the area as a result of new employment opportunities.

(8) Loans, other than for working capital or debt refinancing, for meat processing facilities and integrated meat and poultry operations. Loans may not be guaranteed for agricultural production as defined in §1980.412(e); however, applicants who are in the business of processing, marketing or packaging of agricultural products, as well as agricultural production, may be eligible for loan assistance for that portion of the business other than agricultural production provided the agricultural production aspect is separate from the rest of the business; i.e., the production aspects are handled through separate legal business entities or through maintenance of the accounting system in such a manner as to clearly identify the use of and future accounting of the loan proceeds and operation of the business.

(9) Interest (including interest on interim financing) during the period before the first principal payment becomes due or the facility becomes income producing, whichever occurs first.

(10) Feasibility studies.

(11) *Debt refinancing.* Lenders and FmHA or its successor agency under Public Law 103-354 must provide as part of their loan analysis the reasons for refinancing and the file must be documented accordingly. Refinancing debts may be allowed in connection with viable projects when it is determined by the lender and FmHA or its successor agency under Public Law 103-354 that it is necessary to create new or save existing jobs. FmHA or its successor agency under Public Law 103-354 will consider any lender's exposure as it relates to this item and may adjust the guarantee percentage accordingly. Refinancing in accordance with this paragraph may be insured or guaranteed only when:

(i) It is necessary to spread substantial debt payment over a longer period of time thereby improving the business' net cash flow and working capital position consistent with the useful life of the asset(s) being refinanced, or

(ii) For payment of short-term debt when required in situations customarily financed over long periods of time (e.g., financing the purchase of real estate, machinery, or equipment with short-term debt or cash expenditures, when lenders would not extend reasonable longer terms to the business), or

(iii) It is necessary to place a permanent loan subsequent to an interim loan for financing the construction of the project.

(iv) It does not refinance subordinated owner debt; or

(v) (Except where the amount to be refinanced is owed directly to the Federal government or is Federally guaranteed) the amount to be refinanced by the Agency is a secondary part (less than 50 percent) of the overall loan requested.

(12) Reasonable fees and charges only as specifically listed below and disclosed on Form FmHA or its successor agency under Public Law 103-354 449-1, "Application for Loan and Guarantee," or on an addendum to the application

at the time the request is submitted to FmHA or its successor agency under Public Law 103-354 for processing. Authorized fees include professional fees rendered by professionals generally licensed by individual State or accreditation Associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of the fee will be what is reasonable and customary in the community or region where the project is located. For example, Architects and Engineers customarily charge fees based on a percentage of estimated project costs. Lawyers, Accountants, and Appraisers customarily charge for services on an hourly basis. Any fees for professional or expert services are to be fully documented and justified on the Form FmHA or its successor agency under Public Law 103-354 449-1 and are subject to FmHA or its successor agency under Public Law 103-354 review and approval before the application is presented to the FmHA or its successor agency under Public Law 103-354 State Loan Review Board for action. The above approved fees and charges may be funded out of loan proceeds.

(13) FmHA or its successor agency under Public Law 103-354 guarantee fee.

(14) Acquisition of membership and/or stocks, bonds, or debentures necessary to obtain a loan from Production Credit Associations, Banks for Cooperatives, Small Business Investment Companies, and other lenders, provided such acquisition is required of all their borrowers. However, a lender which requires membership fees in such organization or the purchase of securities issued by such organization will not use such proceeds to acquire, lease or improve property which does not benefit its members.

(15) Aquaculture including conservation, development and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned and regulated stock of fish.

(16) *Energy projects.* Commercially available energy projects that produce biomass fuel or biogas as an output

must have completed two operating cycles at design performance levels submitted to the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

(b) *Public bodies.* See §§1980.481 and 1980.488.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988; 54 FR 28022, July 5, 1989; 71 FR 33187, June 8, 2006]

§ 1980.412 Ineligible loan purposes.

Loans may *not* be made or guaranteed if the funds are used:

(a) To pay off a creditor in excess of the value of the collateral.

(b) For distribution or payment to the owner, partners, shareholders or beneficiaries of the applicant or members of their families when such persons will retain any portion of their equity in the business.

(c) For projects in which such assistance exceeds \$1 million and when direct employment increases more than 50 employees which is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by the operations of the applicant. This limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such explanation is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(d) For projects in which such assistance exceeds \$1 million and when direct employment increased more than 50 employees which is calculated to or likely to result in an increase in the production of goods, materials or commodities, or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(e) For agricultural production which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control, and/or management of farm and domestic animals. Exceptions to this definition are:

(1) Aquaculture as identified under eligible purposes.

(2) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(3) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(4) Loans for livestock and poultry processing as identified under eligible purposes.

(5) The growing of mushrooms or hydroponics.

(f) For the transfer of ownership of a business unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(g) For financing community antenna television services or facilities.

RHS, RBS, RUS, FSA, USDA

§ 1980.414

(h) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(i) For lending and investment institutions and insurance companies.

(j) For assistance to government employees and military personnel who are directors, officers or have a major ownership of 20 percent or more in the business.

(k) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(l) For any illegal business activity.

(m) For hotels, motels, tourist homes, or convention centers.

(n) For any tourist, recreation or amusement facility.

(o) For any line of credit.

Administrative

Par (c) and (d). The FmHA or its successor agency under Public Law 103-354 State Director will review the criteria in §1980.412(c) and (d) and make a written determination with supporting data and reasons as to the determinations. Such review must be independent of the Department of Labor certification. The State Director will make sure the loan file contains these determinations as part of the loan analysis prior to the issuance of the Conditional Commitment for Guarantee.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988]

§ 1980.413 Transactions which will not be guaranteed.

(a) The following transactions will not be guaranteed by FmHA or its successor agency under Public Law 103-354:

(1) The guarantee of lease payments.

(2) The guarantee of loans made by other Federal agencies. This does not preclude the guaranteeing of loans made by the Bank for Cooperatives, Federal Land Bank, or Production Credit Association.

(3) The guarantee or making of any B&I loans(s), to any one borrower, when the total amount of the B&I loans(s) requested plus the outstanding balance of any existing B&I loan(s) is in excess of \$10 million.

(b) Guaranteeing of loans involved in tax-exempt obligations under §1980.23 of Subpart A of this Part.

Administrative

The State Director will consider the overall State allocations of funding authority in recommending loans for processing. Loan requests which fall within Small Business Administration (SBA) authority should continue to be referred to SBA. If the State Director decides to process SBA size loans, the loan file must be fully documented as to the reasons for such actions.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988]

§ 1980.414 Fees and charges by lender and others.

[See Subpart A, §1980.22]

(a) All fees and charges must be specifically documented and justified on the Form FmHA or its successor agency under Public Law 103-354 449-1 or on an addendum to the application at the time the loan request is submitted to FmHA or its successor agency under Public Law 103-354 for processing. Allowable fees will be those reasonably and customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA or its successor agency under Public Law 103-354 review and approval.

(b) Packaging fees include services rendered by the lender or others in connection with preparation of the application and seeing the project through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount of the loan up to \$1 million and on all amounts over \$1 million, an additional one-fourth percent up to total maximum fee of \$50,000. Packaging fees, investment banker fees and other fees and charges not specifically provided for in this section are permitted subject to FmHA or its successor agency under Public Law 103-354 review and approval. Loan proceeds may be used to pay fees as specifically authorized under §§1980.411(a)(12) and (13). Packaging fees, investment banker fees, and any

§§ 1980.415–1980.418

other fees or charges shall not be paid from loan proceeds.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988]

§§ 1980.415–1980.418 [Reserved]

§ 1980.419 Eligible lenders.

[See Subpart A, § 1980.13.]

Administrative

A. *Par (a) of Subpart A, § 1980.13* requires National Office approval for any variations.

B. *Par (b)(4) of Subpart A, § 1980.13*, State Director submits information to National Office with recommendations.

C. With prior written approval of the FmHA or its successor agency under Public Law 103-354 National Office, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the National Office only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the National Office, the State Director will submit to the Finance Office Form FmHA or its successor agency under Public Law 103-354 1980-42. "Notice of Substitution of Lender."

§ 1980.420 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and FmHA or its successor agency under Public Law 103-354.

(a) For loans of \$2 million or less, the maximum percentage of guarantee is 90 percent.

(b) For loans over \$2 million but not over \$5 million, the maximum percentage of guarantee is 80 percent.

(c) For loans in excess of \$5 million, the maximum percentage of guarantee is 70 percent.

(d) Lenders and borrowers will propose the percentage of guarantee. FmHA or its successor agency under Public Law 103-354 informs lenders and borrowers in writing on Form FmHA or its successor agency under Public Law 103-354 449-14 of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. FmHA or its successor agency under Public Law 103-354 determines the percentage of guarantee after con-

7 CFR Ch. XVIII (1-1-09 Edition)

sidering all credit factors involved, including but not limited to:

(1) *Borrower's management*. The borrower's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services;

(2) *Collateral*. Collateral for the loan;

(3) *Financial condition*. Financial condition of borrower or borrower's principals, if appropriate;

(4) *Lender's exposure*. The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority; and

(5) *Trends and conditions*. Current trends and economic conditions.

[53 FR 40401, Oct. 17, 1988]

§§ 1980.421–1980.422 [Reserved]

§ 1980.423 Interest rates.

(a) *Guaranteed loans*. Rates will be negotiated between the lender and the borrower. They may be either fixed or variable as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA or its successor agency under Public Law 103-354 review and approval. Should any part of the loan(s) be sold by the lender, FmHA or its successor agency under Public Law 103-354, in its analysis, will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. The variable interest rate may be adjusted at different intervals during the term of the loan but the adjustments may not be more often than quarterly. The intervals between interest rate adjustments will be specified in the Loan Agreement. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an

interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(2) Under a Memorandum of Understanding between FmHA or its successor agency under Public Law 103-354 and the Farm Credit Administration dated September 25, 1974, the interest rate on loans made by the Bank for Cooperatives, Federal Land Banks and Production Credit Associations may be a variable rate based on their administrative and borrowing costs.

(3) Any change in the interest rate between the date of issuance of the Form FmHA or its successor agency under Public Law 103-354 conditional Commitment For Guarantee," and before the issuance of the Loan Note Guarantee must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA or its successor agency under Public Law 103-354 449-14.

(4) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(i) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar size and purpose for borrowers under similar circumstances.

(ii) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(5) When multi-rates are used, the lender will provide FmHA or its successor agency under Public Law 103-354 with the overall effective interest rate for the entire loan.

(6) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate of their B&I guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA or its successor agency under Public Law 103-354 must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by FmHA or its successor agency under Public Law 103-354, then FmHA or its

successor agency under Public Law 103-354 is a holder and must affirm or reject interest rate change proposals. When FmHA or its successor agency under Public Law 103-354 is a holder, it will concur in such interest rate change only when it is demonstrated to FmHA or its successor agency under Public Law 103-354 that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination will include whether the proposed interest rate will be below the Government's cost of borrowing money, whether continuing with the loan would realistically promote or enhance rural development and employment in rural areas, whether the monetary recovery would be increased by proceeding immediately to liquidation, if applicable, or allowing the borrower to continue at a reduced interest rate, and whether an in-depth financial analysis by the lender reasonably indicates that the business would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any. The FmHA or its successor agency under Public Law 103-354 will reflect the documentation of the interest rate change decision.

(i) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(ii) Variable rates can be changed to reduced fixed rates. In a final loss settlement, when qualifying rate changes were made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate can never exceed the amount which would have been eligible for claim had the variable interest remained in force. The lesser cost to the Government will always prevail. The lender must maintain records which adequately document the accrued interest claimed.

(iii) The lender is responsible for the legal documentation of interest changes by an allonge attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note(s) may be issued.

(7) No increases in interest rates will be permitted under the B&I loan guarantee except the normal fluctuations in approved variable interest rate loans.

(b) *Insured loans.* (1) Loans for other than those in paragraph (b)(2) of this section will bear interest at a rate prescribed by FmHA or its successor agency under Public Law 103-354, and will be announced periodically. The interest rate for insured loans will be the rate in effect at the time the loan is approved or at the time the loan is closed, whichever rate is lower.

(2) Loans to public bodies, nonprofit associations and Indian Tribes used to finance community facilities will bear interest at the rate prescribed in FmHA or its successor agency under Public Law 103-354 Instruction 440.1, Exhibit B (available in any FmHA or its successor agency under Public Law 103-354 Office).

Administrative

Par (a)(6) and (a)(7). (Added 4-26-85, SPECIAL PN.) The Director will notify the Finance Office of any interest rate reduction by using Form FmHA or its successor agency under Public Law 103-354 1980-47, "Guaranteed Loan Borrower Adjustments." The State Director will make corrections to the Rural Community Facility Tracking System (FCFTS) reflecting the interest rate change. The FmHA or its successor agency under Public Law 103-354 loan file, as well as the attachments to the copy of the promissory note in the file, will be documented by the State Director to reflect any change in the interest rate.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 28022, July 5, 1989]

§ 1980.424 Term of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the promissory note except, any interest accrued as the result of the borrower's default on the guaranteed loan(s) over and above that which would have accrued at the normal note rate on the guaranteed loan(s) will not be guaranteed by FmHA or its successor agency under Public Law 103-

354. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and applicant but on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within three years from the date of the promissory note and at least annually thereafter. Interest will be due at least annually from the date of the note. Ordinarily, monthly payments will be expected, except for seasonal-type businesses.

(b) The maximum time allowable for final maturity for an FmHA or its successor agency under Public Law 103-354 guaranteed B&I loan will be limited to thirty (30) years for land, buildings and permanent fixtures; the usable life of the machinery and equipment purchased with loan funds, but not to exceed fifteen (15) years; and seven (7) years for the working capital portion of the loan. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan.

(c) The maximum time allowable for final maturity of an FmHA or its successor agency under Public Law 103-354 insured loan for community facilities will not exceed forty (40) years.

(d) FmHA or its successor agency under Public Law 103-354 will not guarantee any loan in which the promissory note or any other document provides for the payment of interest upon interest.

Administrative

It is permissible for lenders to structure the borrower's financial proposal under the multi-note option as provided for in paragraph III A.2. of Form FmHA or its successor agency under Public Law 103-354 449-35, "Lender's Agreement," in the following ways:

A. To treat the entire financial package of the borrower as one loan (i.e., loan purposes may include one or any combination of working capital, machinery and equipment or real estate) provided:

1. The loan is amortized to provide repayment of the working capital portion within

RHS, RBS, RUS, FSA, USDA

§ 1980.433

the 7 years, the machinery and equipment portion within useful life or 15 years, whichever is less, and real estate portion within 30 years.

2. One note represents the unguaranteed portion of the loan. It is permissible to issue as many as 10 notes or the guaranteed portion of the loan.

3. A Form FmHA or its successor agency under Public Law 103-354 449-34, "Loan Note Guarantee," is attached to all notes, including the unguaranteed note.

4. One interest rate (either variable or fixed) is used for the entire loan or one interest rate is used on the guaranteed portion and a different interest rate is used on the unguaranteed portion, subject to the requirements and conditions found in §1980.423 of this subpart.

5. One of each of the following Forms: FmHA or its successor agency under Public Law 103-354 449-14, FmHA or its successor agency under Public Law 103-354 1940-3, "Request for Obligation of Funds—Guaranteed Loans," FmHA or its successor agency under Public Law 103-354 449-35, and FmHA or its successor agency under Public Law 103-354 1980-19, "Guaranteed Loan Closing Report," is used.

B. To treat the financial package of the borrower as separate loans that are processed as a single application provided:

1. A separate loan is made for each purpose (i.e., working capital, machinery and equipment or real estate). As an example, a working capital loan could be structured as follows:

One note for \$XXXX at X% interest due in 7 years representing the unguaranteed portion of the loan, and

Up to 10 notes for \$XXXX at X% interest due in 7 years representing the guaranteed portions of the loan.

2. A Form FmHA or its successor agency under Public Law 103-354 449-34 is attached to all notes, including the unguaranteed note.

3. A different interest rate may be used on the guaranteed and unguaranteed portions of the loan, subject to the requirements and conditions found in §1980.423 of this subpart.

4. Separate Forms FmHA or its successor agency under Public Law 103-354 449-14, 1940-3, 449-35, and 1980-19 are required for each loan. If you have two loans, one for working capital and another for real estate, then a set of these forms will be required for each loan.

C. Form FmHA or its successor agency under Public Law 103-354 449-36, "Assignment Guarantee Agreement," will never be used when the multi-note option is utilized.

D. Par. (b). The State Director will assure that the loan officer reviewing the application fully evaluates the useful life of the collateral offered for the loan when determining maturities for the loan. Loan requests for

the maximum maturities could result in collateral obsolescence prior to full repayment of the indebtedness. The loan file must be documented to support the maturity granted for the loan.

[52 FR 6501, Mar. 4, 1987, as amended at 56 FR 8271, Feb. 28, 1991]

§ 1980.425 Availability of credit from other sources.

(a) Inability to obtain credit elsewhere is not a requirement for guaranteed assistance under this subpart.

(b) To be eligible for an insured loan under this subpart, the borrower must be unable to obtain the required credit from private or cooperative sources at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near the borrower's location(s) for loans for similar purposes and period of time. The borrower's inability to obtain such credit elsewhere will be determined in accordance with subpart A of part 1942 of this chapter.

§ 1980.426–1980.431 [Reserved]

§ 1980.432 Environmental requirements.

[See subpart A, §1980.40 and subpart G of part 1940 of this chapter.]

Administrative

When required by subpart G of part 1940 of this chapter, the approving official will review Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information," submitted by the borrower and the environmental impact assessment prepared by the environmental reviewer. The approving official will indicate his/her decision as part of the assessment when required. If the approving official determines that an EIS is required, he/she will notify the borrower and lender in writing.

§ 1980.433 Flood or mudslide hazard area precautions.

(See subpart A, § 1980.42.)

Administrative

The State Director is responsible for determining if a project is located in a special flood or mudslide hazard area. Refer to subpart B of part 1806 of this chapter [FmHA or its successor agency under Public Law 103-354 Instruction 426.2].

§ 1980.434

§ 1980.434 Equal opportunity and non-discrimination requirements.

(See subpart A § 1980.41.)

Administrative

The State Director will assure that equal opportunity and nondiscrimination requirements are met. If there is indication of non-compliance with these requirements, such facts will be reported by the Compliance Reviewing Officer or FmHA or its successor agency under Public Law 103-354 Official in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ § 1980.435–1980.440 [Reserved]

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing loan or guarantee request with a new loan or guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (a)(1) or (a)(2) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(1) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(i) Collateralized personal and corporate guarantees, including any par-

7 CFR Ch. XVIII (1–1–09 Edition)

ent, subsidiary, or affiliated company, when feasible and legally permissible, and

(ii) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(2) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(b) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(c) The equity requirement must be determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the loan is closed; a certification to this effect is required of all guaranteed lenders.

(d) The modified formula for determining whether the equity requirement is met, "adjusted tangible net worth," may be used only in cases where the guarantee requested is for a loan, the proceeds of which are to be used entirely to refinance a debt owed to the Federal government or Federally guaranteed debt. In all other situations, the equity requirement must be determined using tangible net worth.

[71 FR 33187, June 8, 2006]

§ 1980.442 Feasibility studies.

A feasibility study by a recognized independent consultant will be required for all loans, except as provided in this paragraph. The cost of the study will be borne by the borrower and may be paid from funds included in the loan. The loan approval official may make an exception to the requirement of a feasibility study for loans to existing businesses when the financial history of the business, the current financial condition of the business, and guarantees or other collateral offered for the

loan are sufficient to protect the interest of the lenders and FmHA or its successor agency under Public Law 103-354. FmHA or its successor agency under Public Law 103-354 will thoroughly document the justification for the exception to the feasibility study for such businesses. An acceptable feasibility study should include but not be limited to:

(a) *Economic feasibility.* Information related to the project site, availability of trained or trainable labor; utilities; rail, air and road service to the site; and the overall economic impact of the project.

(b) *Market feasibility.* Information on the sales organization and management, nature and extent of market area, marketing plans for sale of projected output, extent of competition and commitments from customers or brokers.

(c) *Technical feasibility.* Technical feasibility reports shall be prepared by individuals who have previous experience in the design and analysis of similar facilities and/or processes as are proposed in the application. The technical feasibility reports shall address the suitability of the selected site for the intended use, including an environmental impact analysis. The report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income and/or production that are projected in the financial statements. The report shall also identify any constraints or limitations in these financial projections and any other facility or design related factors which might affect the success of the enterprise. The report shall also identify and estimate project operating and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. For the purpose of the technical feasibility reports, the project engineer or architect may be considered an independent party provided the principals of the firm or any individual of the firm who participates in the technical feasibility report does not have a financial interest in the project, and provided further that no other individual or firm with the exper-

tise necessary to make such a determination is reasonably available to perform the function.

(d) *Financial feasibility.* An opinion on the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow. An assessment of the cost accounting system, the availability of short-term credit for seasonal business and the adequacy of raw material and supplies.

(e) *Management feasibility.* Evidence that continuity and adequacy of management has been evaluated and documented as being satisfactory.

Administrative

FmHA or its successor agency under Public Law 103-354 loan approval officials will be selective in approving borrowers for new business ventures involved in unproven products, services, or markets. Should such businesses be considered, additional equity will usually be required.

[52 FR 6501, Mar. 4, 1987, as amended at 58 FR 40039, July 27, 1993]

§ 1980.443 Collateral, personal and corporate guarantees and other requirements.

(a) *Collateral.* (1) The lender is responsible for seeing that proper and adequate collateral is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA or its successor agency under Public Law 103-354.

(2) Collateral must be of such a nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project, and applicant's prospective earnings. Collateral may include, but is not limited to the following: Land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, marketable securities and cash surrender value of life insurance. Collateral may also include assignments of leases or leasehold interest, revenues, patents, and copyrights.

(3) All collateral must secure the entire loan. The lender will not take separate collateral to secure only that portion of the loan or loss not covered by the guarantee. The lender will not

require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan. However, compensating balances as used in the ordinary course of business may be used.

(4) Release of collateral of a going concern is based on a complete analysis of the proposal.

(i) Release of collateral prior to payment-in-full of the FmHA or its successor agency under Public Law 103-354 guaranteed debt must be requested by the lender and concurred with by the State Director as prescribed in §1980.469 Administrative D.2 of this subpart subject to the following conditions:

(A) Collateral taken initially or subsequently may not be released prior to the payoff, in full, of the loan balance without adequate consideration for the value of that collateral. Adequate consideration may include, but is not limited to:

(1) Application of the net proceeds from the sale of the collateral to the note in inverse order of maturity. All or part of the total proceeds, if approved by the Administrator, may be applied to the payment of current or delinquent principal and interest on the note; or

(2) Use of the net proceeds from the sale of collateral to purchase collateral of equal or greater value for which the lender will obtain a first lien position; or

(3) Application of net proceeds from the sale of collateral to the borrower's business operations in such a manner that enhancement of the borrower's debt service ability can be clearly demonstrated; for example, the payoff or reamortization of the loan as the result of a large extra payment which reduces subsequent installments on the loan; or

(4) Assurance to FmHA or its successor agency under Public Law 103-354 that the release of collateral will contribute to the project's success thereby furthering the goals of the B&I program to show why the release of collateral will contribute to the success of the borrower and repayment of the loan; and

(B) FmHA or its successor agency under Public Law 103-354 must not be

adversely affected by the release of collateral; and

(C) If the release of collateral does not involve a reduction of the FmHA or its successor agency under Public Law 103-354 guaranteed debt equal to the net proceeds of the disposition of the collateral, then it must be determined that the remaining collateral is sufficient to provide for the recovery of the FmHA or its successor agency under Public Law 103-354 guaranteed loan(s).

(ii) Sale of collateral of a going concern to the borrower, borrower's stockholder(s) or officer(s), the lender or lender's stockholder(s) or officer(s) must be based on an arm's-length transaction with the concurrence of FmHA or its successor agency under Public Law 103-354.

(b) *Personal and corporate guarantees.*

(1) Unconditional personal/corporate guarantees (i.e., absolute guarantees of full and punctual payment and performance by the borrower) from owners or major stockholders as determined by FmHA or its successor agency under Public Law 103-354 and all partners of partnerships (except for limited partnerships) unless restricted by law *will* be required unless exempted as provided for in paragraph (b)(2) of this section. Guarantees of parent, subsidiaries, or affiliated companies and/or secured guarantees may also be required. FmHA or its successor agency under Public Law 103-354 is not a co-guarantor with the personal or corporate guarantors. The personal and corporate guarantees are part of the collateral for the loan.

(2) An exception to the requirement for personal or corporate guarantees may be made by FmHA or its successor agency under Public Law 103-354 when requested by the lender and if:

(i) The borrower has a satisfactory and current (not over 90 days old) credit report, proven management, evidence of the market necessary to support projections, profitable historical performance of no less than 3 years, abundant collateral to protect the lender and FmHA or its successor agency under Public Law 103-354, sufficient cash flow to service its debts and meets key industry standards such as those of Robert Morris Associates, Dunn and Bradstreet or the like; or

(ii) The borrower's stock is widely enough held so that no one individual can exercise control. Examples of control would include but are not limited to: Holding sufficient proxies and maintaining sufficient family or special interest voting blocks; or

(iii) A borrower which has a parent, subsidiary, or affiliate which is legally restricted from guaranteeing, or if the guarantee would conflict with existing contractual obligations. Examples of existing contractual obligations include but are not limited to restrictions in loan agreements or in credit lines which may preclude guaranteeing.

(3) No guarantees are required from any partners in a limited partnership.

(4) As a general rule, stockholders of publicly traded corporations will not be required to guarantee. However, such guarantees can be required from some of the stockholders where such guarantees are determined necessary to adequately protect the interest of the Government.

(5) If the guarantee would conflict with existing contractual restrictions, the Administrator will have the authority to grant exceptions to the above restrictions upon a finding by the Administrator that such a guarantee is not necessary to adequately protect the Government's interest. Relief would only be granted as to contractual restrictions existing at the time the lender filed an application with FmHA or its successor agency under Public Law 103-354.

(6) Unsecured personal guarantees, while collateral, will not be considered for purposes of adequacy of security. Personal guarantees will be secured by collateral when business collateral offered is determined by FmHA or its successor agency under Public Law 103-354 to be insufficient or when the borrower's credit does not meet the program's normal requirements or anytime the lender deems such security should be taken.

(7) Guarantors of borrowers will:

(i) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing), signed by the guarantors, which make a clear disclosure of community or homestead property.

(ii) in the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing), certified by an officer of the corporation.

(iii) When applicable, provide written evidence to FmHA or its successor agency under Public Law 103-354 of their inability to provide a guarantee because of existing contractual arrangements or legal restrictions.

(c) *Other requirements.* (1) The lender will ascertain that no claim or liens of laborers, material men, contractors, subcontractors, suppliers of machinery and equipment or other parties are against the collateral of the borrower, and that no suits are pending or threatened that would adversely affect the collateral of the borrower when the security instruments are filed.

(2) Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide or any other hazard insurance that may be required to protect the collateral.

(3) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the borrower and will be assigned or pledged to the lender. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(4) Workman's compensation insurance is required in accordance with State law.

Administrative

A. *Par (a)(2).* FmHA or its successor agency under Public Law 103-354's credit analysis of collateral will consist of the following:

1. Little or no value will be assigned to unsecured personal or corporate guarantees.

2. A maximum of 80 percent of current market value will be given to real estate. Special purpose real estate should be assigned less value.

3. FmHA or its successor agency under Public Law 103-354 at its option may permit a maximum of 60 percent of book value to be

§ 1980.444

assigned to acceptable accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts and other accounts deemed, by the FmHA or its successor agency under Public Law 103-354 official, not to be collateral will be omitted. Calculations to determine the percentage to be applied in the analysis are to be based on the realizable value of the accounts receivable taken from a current aging of accounts receivable from the borrower's most recent financial statement.

4. A maximum of 60 percent of book value will be assigned to inventory.

5. Collateral value assigned to machinery and equipment, furniture and fixtures will be based upon its marketability, mobility, useful life and alternative uses, if any.

B. Par (b). The State Director will assure that the collateral values and personal and corporate guarantees are fully reviewed, analyzed and the loan file is documented as to the facts and reasons for decisions reached.

§ 1980.444 Appraisal of property serving as collateral.

(a) Appraisal reports prepared by independent qualified fee appraisers will be required on all property that will serve as collateral. In the case of loans two million dollars or less, the State Director may modify this requirement by permitting the appraisal to be made by a qualified appraiser on the lender's staff with experience appraising the type of collateral involved. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used. The lender will be responsible for assuring that appropriate appraisals are made.

(b) The lender will be responsible for determining that appraisers have the necessary qualifications and experience to make the appraisals. The lender will consult with FmHA or its successor agency under Public Law 103-354 for its recommendations before having the appraisal made.

(c) The lender will determine that the fees or charges of appraisers are reasonable.

(d) Independent appraisals will be made in accordance with the accepted format of the industry and those prepared by the lender in accordance with its policy and procedures. All appraisals will become part of the application. (See § 1980.541(i)(6) of this subpart.)

7 CFR Ch. XVIII (1-1-09 Edition)

(e) If a subsequent loan request is made within 3 years from the date of the most recent borrower's appraisal report, and there is no significant change in collateral, then the FmHA or its successor agency under Public Law 103-354 State Director in his/her discretion, and if the lender agrees, may use the existing appraisal report in lieu of having a new appraisal prepared.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988]

§ 1980.445 Periodic financial statements and audits.

All borrowers will be required to submit periodic financial statements to the lender. Lenders must forward copies of the financial statements and the lender's analysis of the statements to the Agency.

(a) *Audited financial statements.* Except as provided in paragraphs (d) and (e) of this section, all borrowers with a total principal and interest loan balance for loans under this subpart, at the end of the borrower's fiscal year of more than \$1 million, must submit annual audited financial statements. The audit must be performed in accordance with generally accepted accounting principles (GAAP). In addition, the audits are also to be performed in accordance with appropriate Office of Management and Budget (OMB) circulars and any Agency requirements specified in this subpart.

(b) *Unaudited financial statements.* For borrowers with a loan balance (principal plus interest at year-end) of \$1 million or less, the Agency will require annual financial statements which may be statements compiled or reviewed by an accountant qualified in accordance with the publication "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" instead of audited financial statements.

(c) *Internal financial statements.* The Agency may require submission of financial statements prepared by the borrower at whatever frequency is determined necessary to adequately monitor the loan. Quarterly financial statements will be required on new business enterprises or those needing close monitoring.

(d) *Minimum requirements.* This section sets out minimum requirements for audited and unaudited financial statements to be submitted to the Agency. If specific circumstances warrant, the Agency may require audited financial statements or independent unaudited financial statements in excess of the minimum requirements. For example, loans that depend heavily on inventory and accounts receivable for collateral will normally be audited, regardless of the size of the loan. Nothing in this section shall be considered an impediment to the lender requiring financial statements more frequently than required by the Agency or requiring audited financial statements when the Agency would accept unaudited financial statements.

(e) *Public bodies and nonprofit corporations.* Notwithstanding other provisions of this section, any public body or nonprofit corporation that receives a guarantee of a loan that meets the thresholds established by OMB Circular A-128 or A-133 for coverage under such circular, must provide an audit in accordance with the applicable OMB Circular A-128 or A-133 for the fiscal year of the borrower in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit, in accordance with the applicable circular, will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circular A-128 or A-133 will be considered adequate to meet the requirements of this section for that year. OMB Circulars are available from the Office of Management and Budget, EOP Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

[61 FR 18494, Apr. 26, 1996]

§§ 1980.446–1980.450 [Reserved]

§ 1980.451 Filing and processing applications.

(a) *Borrowers' and lenders' contact.* Borrowers and lenders desiring FmHA or its successor agency under Public Law 103-354 assistance as provided in this subpart may file preapplications

or applications with the County Supervisor or District Director servicing the area in which the project is to be located. In either case, the requirements of §1980.46 of Subpart A of this part must be met. The County Supervisor or District Director receiving the request for assistance will promptly notify the State Director of the nature and facts of the request. The FmHA or its successor agency under Public Law 103-354 State Director will promptly arrange an early meeting with the borrower and lender representatives to discuss assembly, preparation and processing of preapplications and applications. The State Director may call upon the County Supervisor and District Director to assist the State Office in any way necessary.

(b) *Applications from cooperatives.* Borrowers eligible for loans from the Bank for Cooperatives will be encouraged to obtain guaranteed loans from that source since the Bank for Cooperatives is experienced in making and servicing such loans and can provide substantial counsel to the applicant. Applications must be submitted to the Bank for Cooperatives as a test for credit elsewhere when an insured loan is being considered. (See FmHA or its successor agency under Public Law 103-354 Instruction 2000-Q available in any FmHA or its successor agency under Public Law 103-354 office for Memorandum of Understanding between FmHA or its successor agency under Public Law 103-354 and Farm Credit Administration.)

(c) *Borrowers eligible for Small Business Administration (SBA) assistance.* All borrowers for loan guarantees eligible for SBA assistance will be advised by FmHA or its successor agency under Public Law 103-354 at the time of receipt of the preapplication of the availability of such assistance and will be encouraged to apply to that agency. (See FmHA or its successor agency under Public Law 103-354 Instruction 2000-P available in any FmHA or its successor agency under Public Law 103-354 office for Memorandum of Understanding between SBA and FmHA or its successor agency under Public Law 103-354).

(d) *Loan Priorities.* Applications and preapplications received by FmHA or

its successor agency under Public Law 103-354 will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (d)(3) of this section, FmHA or its successor agency under Public Law 103-354 will compare an application to other pending applications.

(1) FmHA or its successor agency under Public Law 103-354 will cooperate fully with appropriate State agencies in guaranteeing and insuring loans in a manner which will assure maximum support of the State's strategies for development of its rural areas.

(2) When applications on hand otherwise have equal priority, the applications from a veteran will have preference. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable and who served on active duty in such forces:

(i) During the period April 6, 1917, through March 31, 1921;

(ii) During the period of December 7, 1941, through December 31, 1946;

(iii) During the period of June 27, 1950, through January 31, 1955; or

(iv) For a period of more than 180 days, any part of which occurred after January 31, 1955; but on or before May 17, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

(3) Priorities will be assigned by FmHA or its successor agency under Public Law 103-354 to eligible applications on the basis of a point system that takes into account project location, the creation and saving of jobs, the cost at which those jobs would be created or saved, seasonal and part-time job impact, and leveraging of FmHA or its successor agency under Public Law 103-354 assistance. The application and supporting information submitted with it will be used to determine an eligible proposed project's priority for available funds or guarantee authority. The priorities described in this paragraph will be used by FmHA or its successor agency under Public Law 103-354 to score projects. A copy of the calculation of the score should be placed in the case file for future reference.

(i) *Location priorities.* The priority score for location will be the score for the highest-ranked category in which the project fits. If the location does not fit one of these categories, it receives no points for location. The categories, and their point scores, are:

(A) Located in a city or area under 25,000 population (10 points).

(B) Located in a city or area under 25,000 population that is in an area of high unemployment as of the date of application (20 points).

(C) Located in an area of high unemployment as of the date of application, provided the borrower certifies in writing to the State Director in simple narrative or letter form that the project will employ on a permanent, full-time basis (providing at its own cost such training or retraining as may be needed) persons (numbering no fewer than 25 percent of the project's employment) who are members of displaced farm families which recently derived from farming or ranching the majority of their combined incomes but are no longer actively engaged in farming or ranching as operators or employees (35 points).

(ii) *Jobs priorities.* The priority score for jobs created and/or saved is the score for the highest-ranked category in which the project fits. If the project does not fit one of these categories, it receives no points for jobs. The categories, and their point scores, are:

(A) Project will contribute to the overall economic stability of the project area and generate permanent jobs beyond the entrepreneur and the entrepreneur's household (10 points).

(B) Project will contribute to the overall economic stability of the project area and will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy (20 points).

(C) Project will contribute to the overall economic stability of the project area, will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy, and will retain in that area a significant number of jobs that would otherwise be lost (35 points)

(iii) *Job cost priorities.* The priority score for the project's cost per job is

the score for the highest-ranked category in which the project fits. First, divide the amount of the FmHA or its successor agency under Public Law 103-354 guaranteed loan by the number of jobs created or saved. This will result in the cost per job. Count only full-time jobs. Part-time jobs may be reduced to a fraction of a full-time job and counted. For example, a 20-hour-per-week job, or a job that is full-time for six months per year, is one-half of a job. Second, determine the State's nonmetropolitan household income as described in §1980.451(d)(3)(vi). Third, divide the cost per job by the State's nonmetropolitan household income. For example, if the cost per job is \$10,000 and the State's nonmetropolitan household income is \$20,000, the result will be 0.5. The categories, and their point scores are:

(A) Loans on which the result is greater than 1.5 but less than 2.0 (5 points).

(B) Loans on which the result is from 1.0 to 1.5 (15 points).

(C) Loans on which the result is less than 1.0 (25 points).

If the result exceeds 2.0, a high cost per job in that State, no points are received for job cost.

(iv) *Additional Points.* There shall be added to the score the points indicated for any and all of the following criteria met by the project.

(A) FmHA or its successor agency under Public Law 103-354 guaranteed loan is less than 50 percent of project cost (5 points).

(B) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(C) Project will, in addition to any permanent full-time jobs, create a significant number of part-time or seasonal jobs that will provide additional income to underemployed residents of the project area without their having to give up any present part-time or seasonal jobs (10 points).

(v) *Administrative Points.* The State Director may assign up to 20 points to an application in addition to those points scored under §1980.451(d)(3) (i) through (iv). These administrative points are intended to be assigned by a State Director only in cases of unfore-

seen exigencies, emergencies, benefits to other FmHA or its successor agency under Public Law 103-354-assisted projects (including the limiting of financial risks affecting FmHA or its successor agency under Public Law 103-354 loans and loan guarantees) or the loss of financing if FmHA or its successor agency under Public Law 103-354 funds are not committed in a timely fashion. They may also be assigned in cases in which the project's goods or services are essential to other Federally assisted projects and activities in the area or to the successful implementation of an economic development strategy for the area that is sponsored and/or operated by an agency of the Federal or State government. An explanation for the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to 20 points. An assignment of points by the Administrator will be by memorandum, stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file. In assigning priorities to applications and in selecting projects for funding, FmHA or its successor agency under Public Law 103-354 will consider State development strategies. Funds (guarantee authority) allocated for use as prescribed in this regulation are to be considered for use by Indian tribes within the State regardless of whether State development plans include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in any benefits of these programs.

(vi) *Indexation.* When current, annual data are not available to determine a State's nonmetropolitan household income for purposes of the calculations described in paragraph (d)(3)(iii) of this section, indexation of census data is necessary. The State Director will use the figure from the most recent decennial census of the United States, increased by a factor representing the increase since the year of that census in the Consumer Price Index ("CIP-U").

That factor shall be furnished annually by the National Office, FmHA or its successor agency under Public Law 103-354.

(e) *Filing preapplications and applications.* Borrowers or lenders may file preapplications described in paragraph (f) of this section if they desire an expression of FmHA or its successor agency under Public Law 103-354 interest prior to assembling the complete application and request for Loan Note Guarantee or they may present the complete application, in one package, including the material required in paragraphs (f), (i), (j), and (k) of this section.

(f) *Preapplications.* Applicants may file preapplications with the County, District, or State Office including:

(1) A letter prepared by the borrower and the lender which shall include:

(i) Borrower's name, address, contact person and telephone number.

(ii) Amount of loan request.

(iii) Name of the proposed lender, address, contact person, and telephone number.

(iv) Brief description of the projects, products and services provided.

(v) Type and number of employment opportunities and unemployment rate where the project will be located.

(vi) Amount of borrower's equity and guarantees offered.

(vii) Anticipated loan maturity and interest rates.

(viii) Availability of raw materials and supplies.

(ix) If a corporation, names and addresses of borrower's parent, affiliates and/or subsidiary firms and a brief description of relationship, products and ownership among borrower, parent, affiliates and subsidiary firms.

(2) Form FmHA or its successor agency under Public Law 103-354 449-22, "Certification of Non-Relocation and Market and Capacity Information Report."

(3) Form FmHA or its successor agency under Public Law 103-354 449-4, "Statement of Personal History," for a proprietor (owner), each partner, officer, director, key employee and stockholders holding 20 percent or more interest in the borrower except for those corporations listed on a major stock exchange and for those so listed if re-

quired by FmHA or its successor agency under Public Law 103-354. Forms FmHA or its successor agency under Public Law 103-354 449-4 are not required to be submitted for elected officials and appointed officials in connection with loan applications from public bodies. Failure to report full, complete and accurate information on the Statement of Personal History may result in FmHA or its successor agency under Public Law 103-354's not making or guaranteeing the loan. Whenever possible, a local, regional, or national credit report, furnished by the lender, will be used to verify data on Form FmHA or its successor agency under Public Law 103-354 449-4.

(4) A record of any pending or final regulatory or legal (civil or criminal) action against the borrower, parent, affiliate, proposed guarantors, subsidiaries, principal stockholders, officers and directors.

(5) For existing businesses, a current balance sheet, and latest profit and loss statement (not more than 60 days old) and financial statements including parent, affiliate and subsidiary firms, for at least the last 3 years or more if necessary for a thorough evaluation.

(6) A detailed projection of gross revenue, net earnings and cash flow statements for 3 years including assumptions upon which such forecasts are based.

(7) Sales projections indicating the percent of the national and local market the business expects to obtain.

(8) Intergovernmental consultation should be carried out in accordance with 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA or its successor agency under Public Law 103-354 Instruction 1940-J, available in any FmHA or its successor agency under Public Law 103-354 Office.

(g) *Preliminary determination by FmHA or its successor agency under Public Law 103-354.* If preparation information indicates the project will not meet FmHA or its successor agency under Public Law 103-354's minimum credit standards for a sound loan, is ineligible, does not have sufficient priority or that funds or guarantee authority are not available for the project,

FmHA or its successor agency under Public Law 103-354 will so inform the lender. The lender will be notified in writing with all reasons for the decision indicated. If it appears that the project is eligible, has sufficient priority, is economically feasible and loan guarantee authority is available, FmHA or its successor agency under Public Law 103-354 will inform the lender and borrower in writing and request that they complete the application.

(h) *Department of Labor certifications.* FmHA or its successor agency under Public Law 103-354 will submit Form FmHA or its successor agency under Public Law 103-354 449-22 to the Department of Labor for the necessary certification that the proposal will not be in conflict with § 1980.412(c) and (d).

(i) *Content of Applications:*

(1) Form FmHA or its successor agency under Public Law 103-354 449-1.

(2) Form FmHA or its successor agency under Public Law 103-354 449-2.

(3) Form FmHA or its successor agency under Public Law 103-354 1940-20, when required by Subpart G of Part 1940 of this chapter.

(4) Architectural or engineering plans, if applicable.

(5) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(6) Appraisal reports.

(7) For existing businesses a pro forma balance sheet at startup and for at least three additional projected years, indicating the necessary startup capital, operating capital and short-term credit based on financial statements for the last three years, or more (if available); and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The business should submit a current balance sheet with a debt schedule of any debts to be refinanced and an income statement to FmHA or its successor agency under Public Law 103-354, through the lender, every 90 days from the time the application is filed with the lender to the time of issuance of the Loan Note Guarantee. If debt refinancing is requested, a debt schedule is prepared (correlated to the latest balance sheets) reflecting the

debts to be refinanced including the name of the creditor, the original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secured such loans.

(8) For new businesses, a pro forma balance sheet at startup and for the next three years, project cash flow (monthly first year, quarterly for two additional years) and projected earnings statements for three years supported by a list of assumptions showing the basis for the projections.

(9) Any credit reports obtained by the lender or FmHA or its successor agency under Public Law 103-354 on the borrower, its principals and parent, affiliate and subsidiary firms.

(10) Form FmHA or its successor agency under Public Law 103-354 400-1, "Equal Opportunity Agreement," if construction costing more than \$10,000 is involved.

(11) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency.

(12) Personal and corporate financial statements of those guarantors named in § 1980.443.

(13) Proposed loan agreement. (See paragraph VII of Form FmHA 449-35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include the Agency requirements as set forth in the Form FmHA 449-14 including the requirements for periodic financial statements in accordance with § 1980.445. The loan agreement must also include, but is not limited to, the following:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restrictions on dividend payments.

(iii) Limitation on purchase or sale of equipment and fixed assets.

(iv) Limitations on compensation of officers and owners.

(v) Minimum working capital requirements.

(vi) Maximum debt to net worth ratio.

§ 1980.451

7 CFR Ch. XVIII (1-1-09 Edition)

(vii) Restrictions concerning consolidations, mergers or other circumstances.

(viii) Limitations on selling the business without concurrence of the lender and FmHA or its successor agency under Public Law 103-354.

(ix) Repayment and amortization of the loan.

(x) List of collateral for the loan including a list of persons and/or corporations guaranteeing the loan with a schedule for providing the lender and FmHA or its successor agency under Public Law 103-354 with personal and/or corporate financial statements. (See § 1980.443)

(14) A complete feasibility study when required. (See § 1980.442)

(15) Any additional information required by FmHA or its successor agency under Public Law 103-354.

(16) For companies listed on major stock exchanges and/or subject to the Securities and Exchange Commission regulations, a copy of Form 10-K, "Annual Report Pursuant to section 13 or 15 D of the Act of 1934."

(17) Documented evidence that the project is located within or without special flood or mudslide hazard areas.

(18) Notices of compliance with the Privacy Act of 1974.

(i) If the borrower is acting in a personal capacity and not as an entrepreneur for such entities as proprietorships, partnerships, or corporations, and FmHA or its successor agency under Public Law 103-354 solicits personal information for him/her, the individual will be provided Form FmHA or its successor agency under Public Law 103-354 410-9, "Statement Required by the Privacy Act."

(ii) If FmHA or its successor agency under Public Law 103-354 desires to obtain information concerning an individual from any source, FmHA or its successor agency under Public Law 103-354 will provide such source with Form FmHA or its successor agency under Public Law 103-354 410-10, "Privacy Act Statement to References."

(19) On any request for refinancing of existing loan(s) as authorized under § 1980.411(a)(11), the lender is required, as a minimum, to obtain the previously held collateral as security for the guaranteed loan(s). Additional collateral

will be required by FmHA or its successor agency under Public Law 103-354 when refinancing of unsecured or undersecured loans is unavoidable in order to accomplish the necessary strengthening of the firm's current position.

(j) *Use of forms.* FmHA or its successor agency under Public Law 103-354 numbered forms will be used where shown in both preapplications and applications. Otherwise, lenders should use their forms, real estate mortgages, security instruments and other agreements, provided such forms do not contain any provisions that are in conflict or are inconsistent with provisions of the subpart.

(k) *Certificate of need.* If the loan request is for health care facilities (e.g., hospitals or nursing homes), a "Certificate of Need" will be obtained by the borrower from the appropriate regulatory or other agency having jurisdiction over the project and submitted to FmHA or its successor agency under Public Law 103-354 by the lender. If a significant part of the project's income will be from third party payors, (e.g., medicare or medicaid), the project will be designed and operated in a manner necessary to meet the requirements of the third-party payors.

Administrative

A. The State Director:

1. Determines if material and information submitted is completed and signed by the appropriate party in the appropriated capacity.

2. May request the comments and recommendations of the County Supervisor and District Director. Such comments will include but are not limited to the following: Community attitude toward project; a summary of comments regarding the proposal by the lender, county leaders and other interested parties; whether the project is likely to result in the need for additional community facilities such as schools, water, sewer and health care services, and if so, the community's plan for providing such facilities; availability of any required additional labor force and training plans for such force, if needed; an economic forecast of the effect on the community should the project fail, if financed.

3. Will furnish all individuals acting in a personal capacity at the time of filing a preapplication or application and two copies of Form FmHA or its successor agency under Public Law 103-354 410-9. The individual will sign both copies, retaining one and providing

FmHA or its successor agency under Public Law 103-354 with the other copy which becomes a part of the loan file.

4. Will provide any source whom FmHA or its successor agency under Public Law 103-354 obtains information concerning an individual with two copies of Form FmHA or its successor agency under Public Law 103-354 410-10. The source will sign both copies, retain one and provide FmHA or its successor agency under Public Law 103-354 with the other copy which becomes a part of the loan file.

5. Will input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS). The RCFTS data structure consists of 3 sets: Applicant/Borrower (BOR), Facility (FAC), and Loan/Grant Request (LGR) sets. There are multiple screens for the BOR and LGR sets. The State Director may, if he/she so desires, prepare a Form FmHA or its successor agency under Public Law 103-354 2033-34, "Management System Card—Business and Industry," in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2033-F.

6. Will forward immediately to the National Office on all projects.

(a) Form FmHA or its successor agency under Public Law 103-354 449-22 (7 copies) for loans over \$1 million and when direct employment increases more than 50 employees.

(b) For insured loans where the borrower leases facilities to another, submit Form FmHA or its successor agency under Public Law 103-354 449-22 for such borrower. The lessor(s) will also be required to provide Form FmHA or its successor agency under Public Law 103-354 449-22. Subsequent loan requests require resubmission of Form FmHA or its successor agency under Public Law 103-354 449-22.

(c) A local, national or regional credit report and Form FmHA or its successor agency under Public Law 103-354 449-4 for all loans over one million dollars or for loans, regardless of size, when the State Director believes a character evaluation check is advisable.

NOTE: Forms FmHA or its successor agency under Public Law 103-354 449-22 and FmHA or its successor agency under Public Law 103-354 449-4 should *only* be processed if a *complete* preapplication or application has been received.

B. Miscellaneous Administrative provisions:

1. *Par (f).* Preapplications are not to be accepted or processed unless a lender has agreed in writing to finance the proposal. The preapplication letter is a joint letter prepared by the borrower and lender.

2. *Par (g).* Upon receipt of all preapplications in excess of \$5 million, the State Director will transmit to the National Office the material required under paragraph (f)(1), (f)(4) and (f)(5) of this section together

with recommendations and observations an analysis of the quality and permanency of the employment opportunities involved in the project. The National Office will review the proposed project in relation to objectives, priorities and intent of the program and will advise the State Director. After receiving the National Office advice or for loans less than \$5 million, the State Director will inform the borrower of the decision.

3. *Par (i).* State Director submits a transmittal letter with recommendations on loan applications requiring National Office review. Included are:

(a) Loan file.

(b) Form FmHA or its successor agency under Public Law 103-354 449-29, "Project Summary—Business Industrial Loan Division," including State Director's spread sheets, financial history and projections (use attachments to Project Summary if necessary).

(c) Proposed Form FmHA or its successor agency under Public Law 103-354 449-14.

(d) Copy of FmHA or its successor agency under Public Law 103-354 State Loan Review Board Minutes.

(e) Notification of required financial and other reports, their frequency, due dates and fiscal yearend.

4. *Par (i)(9). Credit reports.*

(a) The National Office has a contract to provide credit reports for preapplications, applications, and in instances after the loan(s) is made, where a credit report is needed.

(b) States should first try to have the lender provide such a report because credit reports are the responsibility of the lender.

(c) Any state needing a credit report should telephone the National Office, Director, B&I, and give the name of the business and the city and State location. The report will be mailed to the State the same day, if possible.

5. *File documentation.* Applications will be organized in a loan file in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office.) An 8-position folder with tabs will be utilized.

The State Director may supplement the Position Guides to include specific legal requirements within their State. If the lender prepares a complete application package, it may accompany the docket provided the docket is organized in a binder, indexed and tabbed. Feasibility studies should be kept separate. It is the responsibility of FmHA or its successor agency under Public Law 103-354 employees who work on applications or servicing actions to add to the correspondence section of the loan file (also known as the running record) a written report of any field visits, meetings, telephone conversations and memorandums covering decisions

or reasons for FmHA or its successor agency under Public Law 103–354's actions on the cases. Particular attention must be given to this requirement on cases that become delinquent or problems in order that FmHA or its successor agency under Public Law 103–354 position will be defensible in the event of an adverse action.

6. *Par (i), (13), Audit agreements and requirements.* FmHA or its successor agency under Public Law 103–354 urges the use of a written agreement between the lender and borrower

to assure that there is no misunderstanding concerning FmHA or its successor agency under Public Law 103–354 audit requirements.

7. *Par (i), Forms and documents found in loan docket.* The following table is a guide to forms and documents used in completing an application and loan docket. The filing position within the 8 position folder is shown on the right. Some of these items may not be applicable for a particular loan. However, a complete loan docket may need to include items in addition to the following:

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE

| | | Filing position |
|--|---|-----------------|
| AD–425 | Contractor's Affirmative Action Plan For Equal Employment Opportunity | 1 |
| FmHA or its successor agency under Public Law 103–354 400–1. | Equal Opportunity Agreement | 6 |
| FmHA or its successor agency under Public Law 103–354 400–3. | Notice to Contractors and Applicants | 6 |
| FmHA or its successor agency under Public Law 103–354 400–4. | Assurance Agreement | 3 |
| FmHA or its successor agency under Public Law 103–354 400–6. | Compliance Statement | 6 |
| FmHA or its successor agency under Public Law 103–354 410–8. | Applicant Reference Letter | 3 |
| FmHA or its successor agency under Public Law 103–354 410–9. | Statement Required by the Privacy Act | 3 |
| FmHA or its successor agency under Public Law 103–354 410–10. | Privacy Act Statement to References | 3 |
| FmHA or its successor agency under Public Law 103–354 424–12. | Inspection Report | 6 |
| FmHA or its successor agency under Public Law 103–354 1940–3. | Request for Obligation of Funds—Guaranteed Loans; Filing Position 2 ... | 2 |
| FmHA or its successor agency under Public Law 103–354 1940–22. | Environmental Checklist for Categorical Exclusion, or | 3 |
| FmHA or its successor agency under Public Law 103–354 1940–21. | Environmental Assessment for Class I Action, or | 3 |
| Exhibit H, Subpart G of Part 1940 | Environmental Assessment for Class II Action | 3 |
| | Environmental Impact Statement | 3 |
| FmHA or its successor agency under Public Law 103–354 440–57. | Acknowledgement of Obligated Funds/Check Request | 2 |
| FmHA or its successor agency under Public Law 103–354 449–1. | Application for Loan and Guarantee | 3 |
| FmHA or its successor agency under Public Law 103–354 449–2. | Statement of Collateral | 5 |
| FmHA or its successor agency under Public Law 103–354 449–4. | Statement of Personal History | 3 |
| FmHA or its successor agency under Public Law 103–354 1940–20. | Request for Environmental Information | 3 |
| FmHA or its successor agency under Public Law 103–354 449–14. | Condition Commitment for Guarantee | 2 |
| FmHA or its successor agency under Public Law 103–354 449–22. | Certification of Non-relocation and Market and Capacity Information Report. | 3 |
| FmHA or its successor agency under Public Law 103–354 449–29. | Project Summary—Business Industrial Loan Division | 3 |
| FmHA or its successor agency under Public Law 103–354 449–34. | Loan Note Guarantee | 2 |
| FmHA or its successor agency under Public Law 103–354 449–35. | Lender's Agreement | 2 |
| FmHA or its successor agency under Public Law 103–354 449–36. | Assignment Guarantee Agreement | 2 |
| FmHA or its successor agency under Public Law 103–354 1980–19. | Guaranteed Loan Closing Report | 2 |
| | Annual Audit Report | 1 |
| | Borrower Financial Statements | 3 |
| | Chattel Security Instruments | 1 |
| | Report—Exhibit B, FmHA or its successor agency under Public Law 103–354 Instruction 2015—C. | 1 |
| | Borrower's Certification of Indebtedness | 1 |
| | Lender's Loan Agreement | 2 |
| | Promissory Notes | 2 |
| | Bond (specimen) Bond Ordinances, Bond Transcripts or Similar Items | 2 |

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE—Continued

| | Filing position |
|---|-----------------|
| Running Case Record | 3 |
| Market Analysis Information (feasibility study) | 3 |
| Borrower's and Lender's Preapplication Letters | 3 |
| Lender's Evaluation and Recommendations | 3 |
| Cost Estimates and Forecast for Contingency Funds | 6 |
| Dun and Bradstreet Reports | 3 |
| Corporate or Personal Financial Statements of Guarantors | 3 |
| S.E.C. 10-K Report | 3 |
| Pro-forma Balance Sheet | 3 |
| Current Profit and Loss Statements | 3 |
| Projection of Gross Revenues and Net Earnings | 3 |
| Cash Flow Statements, 3 Years with Assumptions | 3 |
| Appraisal Reports | 8 |
| Documentation for Considering Refinancing | 3 |
| Financial Statements for last 3 years | 3 |
| Complete Debt Schedule | 3 |
| Interim Financial Statements | 3 |
| Aging and Turnover of Receivables and Inventory | 3 |
| Credit Reports | 3 |
| Records of any Pending or Final Regulatory Litigation | 3 |
| Comments on any State Development Strategies | 3 |
| Flood or Mudslide Hazard Area Statement | 3 |
| National Historic Preservation Act Statement | 3 |
| State Review Board Minutes | 3 |
| Certificate of Need (Health Care Facilities) | 3 |
| Clean Air and Water Pollution Control Act Requirements Statement | 3 |
| Correspondence (excluding closing instruments) | 4 |
| Department of Labor Certification | 4 |
| Mortgagee Title Insurance Policy | 5 |
| Title Opinions | 5 |
| By-Laws, Resolutions, or Regulations and Amendments | 5 |
| Articles of Incorporation, By-laws and Regulations or Charter | 5 |
| Lender Security agreements and Financing Statements | 5 |
| Lender Mortgages and Notes | 5 |
| Advice of Office of General Counsel from Review of Docket | 5 |
| Partnership Agreements | 5 |
| Other Documents used in Loan Closing | 5 |
| Schedule of Stock Ownership | 5 |
| Franchise Agreement | 5 |
| Construction Contracts and Compliance Statements | 6 |
| Lender's Approval of Plans and Specifications | 6 |
| Engineer's Certification of Satisfactory Completion in Accordance with Plans and Specifications | 6 |
| Lender's Audit of Expenditures and Project Costs | 6 |
| Evidence of Concurrence and compliance with Construction Requirements of State, County, and Municipal Government (including building permits) | 6 |
| Lender's Closing Certification | 6 |
| Lender's Loan Servicing Plan | 6 |
| Loan Closing Opinion of Lender's Legal Counsel | 6 |

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40401, Oct. 17, 1988; 53 FR 45258, Nov. 9, 1988; 55 FR 26199, June 27, 1990; 56 FR 8271, Feb. 28, 1991; 61 FR 18495, Apr. 26, 1996]

§ 1980.452 FmHA or its successor agency under Public Law 103-354 evaluation of application.

FmHA or its successor agency under Public Law 103-354 will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose and that there is reasonable assurance of repayment ability, sufficient collateral and sufficient equity and the pro-

posed loan complies with all applicable statutes and regulations. If FmHA or its successor agency under Public Law 103-354 determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA or its successor agency under Public Law 103-354 is able to guarantee the loan, it will provide the lender and the borrower

with Form FmHA or its successor agency under Public Law 103-354 449-14, listing all requirements for such guarantees. FmHA or its successor agency under Public Law 103-354 will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form FmHA or its successor agency under Public Law 103-354 449-1. The Conditional Commitment for Guarantee may not be issued on any loan until the State Director has been notified by the National Officer that the Statements of Personal History(s) have been processed and cleared. FmHA or its successor agency under Public Law 103-354 State Directors are the only persons authorized to execute Form FmHA or its successor agency under Public Law 103-354 449-14.

Administrative

State Director evaluates the application and considers:

A. Rural area determinations. (See § 1980.405 of this subpart.)

B. Community impact of the proposal which includes:

1. Number of businesses and industries in the town or city.
2. Employment impact upon the community.
3. Availability of skilled and unskilled labor and permanency of employment opportunities.
4. Vocational and educational facilities to provide skilled labor, if applicable.
5. Policies of applicant regarding unemployment, lay-offs, wage scales, etc.

C. If debt refinancing is requested, consider in accordance with § 1980.411(a)(11) of this subpart and:

1. A complete review will be made to determine whether it is essential to restructure the company's debts on a schedule that will allow the business to operate successfully rather than merely guaranteeing an unsound loan.
 - (a) Obtain a borrower's complete debt schedule. Schedule should agree with borrower's latest balance sheet.
 - (b) Determine from lender if the borrower's present loan(s) is on the lender's regulatory examiner's report and if so determine the loan classification.
 - (c) Analyze lender's liability ledger on the borrower, individual customer credit file, installment Loan Ledger Card or Computer printouts and other credit reports.
 - (d) The percentage of guarantee should be adjusted to assure that the lender does not

bring its previously existing unguaranteed exposure under the guarantee.

(e) Any special servicing requirements should be identified and included in the Conditional Commitment for Guarantee.

D. Applications will be analyzed by an FmHA or its successor agency under Public Law 103-354 State Loan Review Board before execution of Form FmHA or its successor agency under Public Law 103-354 449-14. When analyzing the B&I loan request, the State Loan Review Board will specifically address the issue of the guarantee percentage to be approved. Consideration of reducing the maximum guarantee to less than 90 percent is appropriate when the loan has sufficient strength to warrant further participation by the private sector or refinancing of existing lender debts to the borrower is involved. Ordinarily, B&I loan guarantees should be structured so that the lender bears a significant portion of the risk of loss from a default. "Significant" means equal to or greater than 20 percent of the loss stemming from default. All review board meetings will be fully documented, including the review and decision concerning the guarantee percentage, and will be signed by those FmHA or its successor agency under Public Law 103-354 employees serving on the board. A copy of such documentation will be retained in the loan file.

1. Generally, the review board consists of the State Director as Chairperson, Community and Business Program Chief or the Business and Industry Chief (Loan Specialist) and either the Community Programs Chief, Rural Housing Chief, or Farmer Programs Chief, as appropriate.

2. The State Director may wish to contact non-FmHA or its successor agency under Public Law 103-354 sources for expertise, such as banker or other lenders, industrial development specialists from state commissions, academicians, certified public accountants, tax attorneys, successful business and professional lenders, management consultants and officials from other Federal agencies. Outside resource consultants may be reimbursed only for their travel costs (transportation and subsistence). (See FmHA or its successor agency under Public Law 103-354 Instruction 2036-A which is available in any FmHA or its successor agency under Public Law 103-354 Office).

3. The Rural Housing Loan Chief will be a member of the FmHA or its successor agency under Public Law 103-354 State Loan Review Board if a site development loan (see § 1980.411(a)(7) of this subpart) is being considered. The Community and Business Programs Chief (Loan Specialist) will be a member if a loan for facilities of the type financed under the provisions of Subpart A of Part 1942 of this chapter is being considered. The Farmer Programs Chief will be a member of the board if a project, the success of

which is dependent on the production of agricultural products, is being considered. If the proposed project covers more than one program area, all the chiefs for those programs involved will be members of the board. If the approval of an application for a B&I loan may result in benefiting or hindering other FmHA or its successor agency under Public Law 103-354 programs, the review board will determine whether the making of such loan or guarantee is likely to result in embarrassment for FmHA or its successor agency under Public Law 103-354 as a result of a possible conflict of interest whereby other parties may accuse the agency of giving loan preference to housing borrowers (in the case of site development) or producers (in the case of agricultural processing plants) or other FmHA or its successor agency under Public Law 103-354 programs.

4. The State Director may request the County Supervisor and/or District Director to attend the review board meeting whenever it is determined they may have special knowledge of the proposed loan which may affect the board's decision.

5. Prior to submission of a B&I guaranteed loan(s) request to the National Office for loan processing review and prior to loan approval, the appropriate loan processing official must visit the project site and discuss the loan proposal with the lender and borrower. In the event there are multiple project sites the official should visit a representative sample of project sites to develop deeper understanding of the project operation. For businesses without a developed project site a visit is not necessary; however, a visit with the lender and borrower is still required. The findings of the visit should be documented in the loan docket submitted to the National Office.

6. The State Director will prepare an original and two copies of Form FmHA or its successor agency under Public Law 103-354 1940-3 for each loan to be obligated. Also, for each initial loan, Form FmHA or its successor agency under Public Law 103-354 1980-50, "Add, Delete, or Change Guaranteed Loan Borrower Information," will be prepared. The State Director will sign the original and one copy and conform the second copy. Form FmHA or its successor agency under Public Law 103-354 1940-3 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Form FmHA or its successor agency under Public Law 103-354 1940-3 and Form FmHA or its successor agency under Public Law 103-354 449-14 on the obligation date, unless the Administrator has given prior authorization to the Finance Office to obligate before the 6-day reservation period and directs the State Director to forward Form FmHA or its successor agency under Public Law 103-354 1940-3 to the lender in advance of issuance of

Form FmHA or its successor agency under Public Law 103-354 449-14. The State Director or designee will record the actual date of lender notification on the original of the Form FmHA or its successor agency under Public Law 103-354 1940-3 and retain the original of the form as a permanent part of the FmHA or its successor agency under Public Law 103-354 case file. The State Director may retain the remaining conformed copy of Form FmHA or its successor agency under Public Law 103-354 1940-3. The State Director or designee will use the State Office terminal to request reservation/obligation of funds. Use of the telephone for the reservation/obligation of funds is restricted to those instances when the State Office terminal is inoperative. Form FmHA or its successor agency under Public Law 103-354 1980-50 will be prepared and distributed for initial loans only.

a. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form FmHA or its successor agency under Public Law 103-354 1940-3 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

b. The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 35 of Form FmHA or its successor agency under Public Law 103-354 1940-3.

c. The Finance Office will terminally process telephone reservation requests. Those requests for reservation received before 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

d. Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be 6 working days from the date of the request for reservation of authority which is being processed in the Finance Office. The Finance Office will mail to the State Director Form FmHA or its successor agency under Public Law 103-354 440-57, "Acknowledgment of Obligated Funds/Check Request," prepared in duplicate, confirming the reservation of authority with the obligation date inserted as required

by item No. 9 on the FMI for Form FmHA or its successor agency under Public Law 103–354 440–57. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information staff in the National Office as required by FmHA or its successor agency under Public Law 103–354 Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 office).

e. See FmHA or its successor agency under Public Law 103–354 Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 office) for notification procedures.

7. State Director notifies the lender and borrower if he/she will not issue the Form FmHA or its successor agency under Public Law 103–354 449–14.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 45258, Nov. 9, 1988; 56 FR 8271, Feb. 28, 1991]

§ 1980.453 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form FmHA or its successor agency under Public Law 103–354 449–14 the lender and applicant should complete and sign the “Acceptance of Conditions,” and return a copy to the FmHA or its successor agency under Public Law 103–354 State Director. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA or its successor agency under Public Law 103–354.

(b) If the lender indicates in the “Acceptance of Conditions” that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Note Guarantee, the lender will immediately advise the FmHA or its successor agency under Public Law 103–354 State Director.

Administrative

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form FmHA or its successor agency under Public Law 103–354 449–14. For loans requiring National Office concurrence, a copy of Form FmHA or its successor agency under Public Law 103–354 449–14 and any amendments thereto will be included when the loan file is submitted to the National Office for review. When the National Office recommends modifications or additions to Form FmHA or its successor agency under Public Law 103–354 449–14, the State Director will

further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the scope of the proposed project and if the loan exceeds the State Director’s loan approval authority, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA or its successor agency under Public Law 103–354 449–14 and any amendments thereto. If the loan is within the State Director’s loan approval authority, the State Director may approve such changes.

B. On loan applications within the State Director’s loan approval authority, the State Director will submit to the National Office, Business and Industry Division, within 30 days after the Form FmHA or its successor agency under Public Law 103–354 449–14 has been accepted:

1. A copy of Form FmHA or its successor agency under Public Law 103–354 449–29.
2. A copy of Form FmHA or its successor agency under Public Law 103–354 449–14 is accepted by the lender and borrower.
2. A copy of FmHA or its successor agency under Public Law 103–354 State Loan Review Board Minutes.
4. Notification of required financial and other reports, their frequency, due dates and fiscal year-end.
5. A copy of the proposed loan agreement between the lender and the borrower.
6. When debt refinancing is involved, a copy of the justification for the refinancing.
7. The cover memorandum should indicate whether the Form FmHA or its successor agency under Public Law 103–354 449–34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by §1980.60(a) of Subpart A of this part, and, if not, a proposed date for issuance of the Form FmHA or its successor agency under Public Law 103–354 449–34.

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 28022, July 5, 1989; 57 FR 4359, Feb. 5, 1992]

§ 1980.454 Conditions precedent to issuance of the Loan Note Guarantee.

In addition to compliance with the requirements of §1980.60 of subpart A of this subpart, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee.

(a) *Transfer of lenders.* The FmHA or its successor agency under Public Law 103–354 State Director may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment

for Guarantee (where the Loan Note Guarantee has not yet been issued and the loan is within the State Director's loan approval authority) provided there are no changes in the borrower's ownership or control, loan purposes, scope of project and loan conditions in the Form FmHA or its successor agency under Public Law 103-354 449-14 and the loan agreement remains the same. To effect such a substitution, the former lender will provide FmHA or its successor agency under Public Law 103-354 with a letter stating the reasons it no longer desires to be a lender for the project. For loans in excess of the State Director's loan approval authority, National Office concurrence is required. The State Director will submit a recommendation concerning the transfer of lenders along with the lender's letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form FmHA or its successor agency under Public Law 103-354 449-1. If approved by FmHA or its successor agency under Public Law 103-354, the State Director will issue a letter or amendment to the original Form FmHA or its successor agency under Public Law 103-354 449-14 reflecting the new lender and the new lender will acknowledge acceptance of the letter or amendment in writing.

(b) *Substitution of borrowers.* FmHA or its successor agency under Public Law 103-354 will not issue a Loan Note Guarantee to the lender who is in receipt of a Form FmHA or its successor agency under Public Law 103-354 449-14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in the Form FmHA or its successor agency under Public Law 103-354 449-1, item 15. All requests for exceptions must be approved by the FmHA or its successor agency under Public Law 103-354 National Office.

(c) *Changes in terms and conditions in Form FmHA or its successor agency under Public Law 103-354 449-14.* It is the intent of FmHA or its successor agency under Public Law 103-354 that once the Form FmHA or its successor agency under Public Law 103-354 449-14 is issued and accepted by the lender, the commitment is not to be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds or terms and conditions. Should changes be requested by the lender, the State Director will negotiate with the lender and proposed borrower any proposed changes to the originally accepted Form FmHA or its successor agency under Public Law 103-354 449-14. If, as a result of these negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the scope of the project, and if the loan exceeds the State Director's loan approval authority, the State Director will submit these changes in the conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA or its successor agency under Public Law 103-354 449-14 and any amendments thereto. Changes to the conditional commitment may be approved by the State Director for loans within their loan approval authority.

(d) *Additional requirements for B&I guaranteed loans.* All B&I borrowers and lenders, as applicable, must comply with Appendix D, paragraphs (I) (A) and (B); (II)(A) through (II)(A)(2)(g)(1); (II) (B) and (C); (III) (A), (B), (C), (D), and (E).

(e) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA or its successor agency under Public Law 103-354 and provide those documents and certifications required in §§1980.60 and 1980.61 of subpart A of this part. Only when the FmHA or its successor agency under Public Law 103-354 B&I or C&BP Chief or Loan Specialist, as required in paragraph B. (Administrative) of this section, is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

(f) *Loan closing.* When loan closing plans are established, the lender will

notify FmHA or its successor agency under Public Law 103-354.

(g) *Closing of working capital loans.* The State Director will not issue a Loan Guarantee for a working capital loan prior to the completion of all proposed construction for the project. Working capital loan funds will not be used to pay short-term notes.

Administrative

A. *The State Director reviews:* 1. [Reserved]

2. Plans for inspections made on construction projects. These should be coordinated with the lender and borrower. Form FmHA or its successor agency under Public Law 103-354 424-12, "Inspection Reports," may be used by the State Engineer or Architect who will make an inspection of the projects which involve substantial construction. The inspection shall be completed prior to the issuance of the Loan Note Guarantee to assure all construction is complete. The State Loan Specialist or Chief may also participate in the inspections.

3. Cost overruns, if any, and how they will be met. State Directors may approve cost overruns for projects in any amount or percentage within their loan approval authority not to exceed 10 percent in loan amounts between \$1 million and \$10 million.

4. Basic credit requirements of all loans.

B. In all cases, the Program Chief or the B&I Loan Specialist will conduct a preguarantee review before issuance of the Loan Note Guarantee to assure that all requirements of the application, Conditional Commitment for Guarantee and Loan Agreement have been met including the required certifications using language specified by the regulations, and will provide such verification in the loan file, including arrangements for annual audit reports. In the conduct of this review, all requirements of §1980.60(a) of Subpart A of this part will be reviewed and special attention should be paid to reviewing current financial statements of the borrower to assure that no adverse change has taken place. The District Director may participate in the review.

C. The State Director or any other FmHA or its successor agency under Public Law 103-354 personnel shall not sign any documents other than those specifically provided for in Subparts A or E of this part. No certificates shall be signed except the "Certificate of Incumbency and Signature" as set forth as Appendix B of this subpart.

D. *Par (a) Transfer of Lender.* The State Director will analyze all requests for substituted lenders including the servicing capability, eligibility and experience of the new lender before the request is approved. If approved, notify the Finance Office of the change using Form FmHA or its successor

agency under Public Law 103-354 1980-42, Do not deobligate and reobligate the loan if the Form FmHA or its successor agency under Public Law 103-354 449-14 was issued in a previous fiscal year.

E. *Par (b) Substitution of borrowers.* The State Director will review any request for exceptions to substitution of borrowers and forward such requests with a memorandum of facts and recommendations to the National Office for a decision. The National Office will not approve any request where the legal entity is changed, such as from a corporation to a partnership, etc., or if the ownership changes more than 20 percent.

F. *Par (c) Changes in terms and conditions in Form FmHA or its successor agency under Public Law 103-354 449-14.* The State Director will review any request for changes to Form FmHA or its successor agency under Public Law 103-354 449-14. Only those changes which do not materially affect the project, its capacity, employment, original projections or credit factors may be approved. Changes in legal entities or where tax considerations are the reason for change will not be approved when modifying any loan guarantee or conditions of guarantee. State Directors may approve these changes in terms and conditions if the loan is within the State Director's loan approval authority and the change will not result in a major change in the scope of the project. Changes in terms and conditions for loans in excess of the State Director's loan approval authority, must be submitted to the National Office with a memorandum of facts and recommendations for review and concurrence.

In order to identify the number and types of action taken, the following procedures are to be followed when requests of this type are approved by FmHA or its successor agency under Public Law 103-354.

1. Start with the number 1 when the first modification is approved and enter this number in the upper right hand corner of the Letter of Concurrence and on the related "Modification or Administration Action" sheet.

2. Next to the modified wording on the work copy of the Conditional Commitment for Guarantee and the Term Loan Agreement or any form which has been modified, pencil in a short cross reference to the modification and identify the number given it.

3. File the copies of the "Modification or Administrative Action" sheet and related Letters of Concurrence numerically in the docket directly on top of the affected original documents of conditions.

4. This order of recordkeeping should include any requests which were declined by the National Office.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 26413, July 12, 1988; 57 FR 4359, Feb. 5, 1992; 61 FR 18495, Apr. 26, 1996]

§§ 1980.455–1980.468 [Reserved]

§ 1980.469 Loan servicing.

The lender is responsible for loan servicing and for notifying the FmHA or its successor agency under Public Law 103-354 of any violations in the Lender's Loan Agreement. (See Paragraph X of Form FmHA or its successor agency under Public Law 103-354 449-35).

(a) All B&I guaranteed loans in the lender's portfolio will be classified by the lender as soon as it is notified by the State Office to do so and again whenever there is a change in the loan which would impact on the original classification. The State Director will notify the lender of this requirement for all existing loan guarantees, when new Loan Note Guarantees are issued to a lender and/or when the State Office becomes aware of a condition that would affect the classification and justification of the classification will be sent to the State Office. The loans will be classified according to the following criteria:

(1) *Substandard Classifications.* Those loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in this category must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that the lender and FmHA or its successor agency under Public Law 103-354 will sustain some loss.

(2) *Doubtful Classification.* Those loans which have all the weaknesses inherent in those classified Substandard with the added characteristics that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(3) *Loss Classifications.* Those loans which are considered uncollectible and of such little value that their continuance as bankable loans is not war-

ranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

(b) There is a close relationship between classifications; and no classifications category should be viewed as more important than the other. The uncollectibility aspect of Doubtful and Loss classifications are of obvious importance; however, the function of the Substandard classification is to indicate those loans that are unduly risky which may result in future claims against the B&I guarantee.

(c) Substandard, Doubtful and Loss are adverse classifications. There are other classifications for loans which are not adversely classified but which require the attention and followup of the lenders and FmHA or its successor agency under Public Law 103-354. These classifications are:

(1) *Special Mention Classification.* Those loans which do not presently expose the lender and FmHA or its successor agency under Public Law 103-354 to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving the lender's close attention. Failure to correct these deficiencies could result in greater credit risk in the future. This classification would include loans that the lender is unable to supervise properly because of a lack of expertise, an inadequate loan agreement, the condition of or lack of control over the collateral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the borrower's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this designation. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(2) *Seasoned Loan Classification.* A loan which: (i) Has a remaining principal guaranteed loan balance of two thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(ii) Is in compliance with all loan conditions and B&I regulations.

(iii) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(iv) Is secured by collateral which is determined to be adequate to ensure there will be no loss on the guaranteed loan.

(3) *Current Non-problem Classification*—Those loans that are current and are in compliance with all loan conditions and B&I regulations but do not meet all the criteria for a Seasoned Loan classification. All loans not classified as Seasoned or Current Non-problem will be reported on the quarterly status report with documentation of the details of the reason(s) for the assigned classification.

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the lender on liquidations and property management.

A. While the lender has the primary responsibility for loan servicing and protecting the collateral, the State Director is responsible for seeing that servicing as required by the Lender's Agreement and regulation is properly accomplished. Loan servicing is intended to be a preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

B. *Paragraph II of the Lender's Agreement.* 1. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103-354 acquires knowledge of the foregoing. As used herein, the phrase "use of loan funds for unauthorized purposes" refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purposes" means any purpose not listed by the Lender in the completed application as approved by FmHA or its successor agency under Public Law 103-354.

2. With respect to the negligent servicing and use of loan funds for unauthorized purposes, the Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by negligent servicing and use of loan funds for unauthorized purposes regardless of the time FmHA or its successor agency under Public Law 103-354 acquires knowledge of the negligent servicing or use

of loan funds for unauthorized purposes by the lender. Only the amount of the loss caused by negligent servicing or use of loan funds for unauthorized purposes can be withheld from the final loss claim submitted by the lender. The dollar amount withheld from the final loss claim must be ascertainable. In order to determine the final loss amount, the guaranteed loan collateral and any collateral of the guarantor(s) must be liquidated and settled or a settlement with the guarantor(s) reached. In the event there is reason to suspect the lender of negligent servicing or use of loan funds for unauthorized purposes during the life of the loan, the lender should be notified in writing that (a) the acts of negligent servicing and/or use of loan funds for unauthorized purposes will cause the guarantee to be unenforceable by the lender to the extent these acts cause a loss; (b) any decision not to honor any part of the guarantee is not possible until the loan has been liquidated and a loss established; (c) if any loss occurs FmHA or its successor agency under Public Law 103-354 will consider whether negligent acts of the lender caused a loss after the liquidation is complete; and (d) at the time FmHA or its successor agency under Public Law 103-354 determines a loss has occurred as the result of negligent servicing the lender may appeal any adverse decision.

3. When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2012-B (available in any FmHA or its successor agency under Public Law 103-354 office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, FmHA or its successor agency under Public Law 103-354 staff must coordinate with OIG in advance regarding routine servicing actions on existing loans. A borrower or lender can be sued even though criminal fraud is present. If FmHA or its successor agency under Public Law 103-354 has good reason to believe that, for example, a borrower or a lender made a false statement to obtain a loan or guarantee, or a lender submitted a loss claim to FmHA or its successor agency under Public Law 103-354 which was false or fraudulent, it should promptly call the matter to the attention of OGC—even if no payment of the loss claim

has occurred yet. (This would include those situations in which a borrower lied to the lender in order to get the loan, the lender believed the borrower and made the loan—which was guaranteed by FmHA or its successor agency under Public Law 103-354—and then the lender presented a loss claim to FmHA or its successor agency under Public Law 103-354 for payment after the borrower defaulted on the loan.) Sometimes it might be necessary to ask OIG to do an investigation to establish all the aspects of the fraud. If at all possible, this should then be done prior to referral to OGC.

4. There are two methods the Government could use to seek relief for the fraud. One of the ways the Government could seek redress for the fraud is to sue under the False Claims Act (31 U.S.C. sections 3729-3731). If fraud is proven to have occurred, the False Claims Act provides for the recovery of double damages and a \$2,000 penalty (and the costs of one civil suit) for each act involving, for example: (a) Knowingly submitting to a Government employee of false or fraudulent claim for payment or approval, (b) knowingly making or using a false record or statement to get a false or fraudulent claim paid or approved, or (c) conspiring to defraud the United States by getting a false or fraudulent claim allowed or paid. Suit under the False Claims Act must be filed within six years from the date of the commission of the act (e.g., presentation of the claim to FmHA or its successor agency under Public Law 103-354 for payment). The double damage feature ought to be a good incentive to convince OIG to undertake necessary investigations to help establish the fraud.

5. In order to decide whether to file suit, the Department of Justice will need to know such things as: What was the amount of the loan or the loss paid to the lender or holder? How much did the scheme cost the Government? What is the difference in money between what the Government paid out and what it should have paid out? Does the borrower or lender have enough assets to make it worth suing? If FmHA or its successor agency under Public Law 103-354 can answer these questions before referral to OGC—either on its own or by using OIG—than OGC can refer the matter that much more quickly to the Justice Department.

6. There is also a way to bring suit for civil fraud by alleging that “common law” fraud occurred. This would just involve proving that a borrower or a lender falsely represented by their words or actions, a matter of fact either by alleging something in a false or misleading manner or by concealing something that should have been disclosed; and that FmHA or its successor agency under Public Law 103-354 was deceived by this conduct, and relied on it to its detriment. Under “common law” fraud, only single damages could be recovered, and there

would be no \$2,000 penalty assessed. The action would generally have to be brought within three years from the date of the discovery of the fraud.

7. Neither the False Claims Act nor the right to bring a “common law” action for fraud precludes the Government from just suing to recover the money wrongfully or mistakenly paid by its employees. If the Justice Department decides not to pursue a civil frauds claim under the False Claims Act or “common law,” it will return the matter to OGC. Depending on what stage the proceedings were in when the matter was first referred, FmHA or its successor agency under Public Law 103-354 could then continue to negotiate with the lender or OGC could re-refer the case to Justice for any contract-based actions, including fraud or misrepresentation based on the terms of the guarantee.

C. The State Director will assure that: 1. [Reserved]

2. A timetable for routine site, borrower and lender visitations by FmHA or its successor agency under Public Law 103-354 personnel is established before the Loan Note Guarantee is issued. As a guide, visits to newly established borrowers with the lender represented should be scheduled monthly. Visits to established, nonproblem borrowers must be made at least annually except for seasoned loans which will be visited at least bi-annually. Special attention problem accounts should be visited as frequently as the need demands. If possible, these visitations should be coordinated with the lender’s visits.

3. During or in preparation for field visits, the following functions are to be performed:

(a) Current financial information is obtained in advance and analyzed for trends.

(b) Any issues revealed or problems not resolved from the last visitation are included in the agenda.

(c) Collateral is observed and its condition, maintenance, protection and utilization by the borrower appears to be satisfactory.

(d) A report of the visit is made on Form FmHA or its successor agency under Public Law 103-354 449-39, “Field Visit Review (Business and Industrial Loans),” or otherwise documented and included in the loan file. The report should include an opinion of the borrower’s status based upon observations made during the visit.

(e) Any instructions or directions to the lender should be confirmed by letter.

4. The Program Chief or Loan Specialist will conduct an annual meeting with each lender or its agent with whom a Loan Note Guarantee(s) or Contract of Guarantee(s) is outstanding. This cannot be redelegated. These meetings may be scheduled at the time FmHA or its successor agency under Public Law 103-354 makes periodic field inspections to the borrower’s place of business.

§ 1980.470

At the meeting, a review will be made of the lender's performance in loan servicing, including enforcement of conditions and covenants in the loan agreements. The observations and results of the meeting will be documented. Form FmHA or its successor agency under Public Law 103-354 449-39 may be used for this purpose. Servicing exceptions on the part of the lender which are noted by FmHA or its successor agency under Public Law 103-354 will be confirmed by letter to the lender.

5. The lender performs an adequate analysis of borrower financial statements for FmHA or its successor agency under Public Law 103-354. FmHA or its successor agency under Public Law 103-354 in turn will evaluate the lender's analysis and follow up with the lender on servicing action(s) required or negative observations not detected through the lender's analysis. The financial statement analysis of the lender, the financial statement and a memorandum reflecting FmHA or its successor agency under Public Law 103-354's analysis, including a comparison to previous and projected performance of the borrower, will be forwarded to the National Office, Attention: Business and Industry Division, only for the following loans:

(a) All loans within the first year of loan closing.

(b) Loans over one year old as determined by the State Director or a National Office assigned loan reviewer who is participating in a field review. In event of a disagreement between the State Director and an assigned loan reviewer as to which loans should be included, the assigned loan reviewer's decision will take precedence.

(c) All problem and delinquent loans.

(d) Loans that the State Director would like reviewed by the National Office.

6. Meetings are arranged between the lender, borrower and FmHA or its successor agency under Public Law 103-354 to resolve any problems of late payment, etc.

D. *State Director authorities.* 1. The State Director may delegate authority for the conduct of all functions listed in §1980.469 Administrative B., except item C. 4. in Administrative B.

2. The State Director may approve B&I guaranteed loan servicing actions as authorized in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter.

3. Servicing actions on loans which exceed the State Director's loan approval authority are to be referred together with the State Director's recommendations to the Director, Business and Industry Division, for prior review and concurrence.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988; 60 FR 26350, May 17, 1995; 61 FR 18495, Apr. 26, 1996]

7 CFR Ch. XVIII (1-1-09 Edition)

§ 1980.470 Defaults by borrower.

[See §1980.63 of Subpart A, of this part.]

Administrative

Refer to Appendix G of FmHA or its successor agency under Public Law 103-354 Instruction 1980-E (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the lender on liquidations and property management.

A. In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the State Director, or its designee, and borrower to resolve the problem. A memorandum of the meeting, individuals who attend, a summary of the problem and proposed solution will be prepared by the FmHA or its successor agency under Public Law 103-354 representative and retained in the loan file. When the State Director receives a notice of default on a loan, he/she will immediately notify the National Office in writing of the details and will subsequently report the problem loan to the National Office on the quarterly status report. The State Director will notify the lender and borrower of any decision reached by FmHA or its successor agency under Public Law 103-354.

B. In considering servicing options, some of which are identified in paragraph X. A of Form FmHA or its successor agency under Public Law 103-354 449-35, the prospects for providing a permanent cure without adversely affecting the risks of the FmHA or its successor agency under Public Law 103-354 and the lender must become the paramount objective. Within the State Director's authority temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interests of the lender and FmHA or its successor agency under Public Law 103-354. Some of these actions may require concurrence of the holder(s). A deferral, rescheduling, reamortization or moratorium is limited by the period of time authorized by this subpart for the purpose for which the loan(s) is made or the remaining useful life of the collateral securing the loan. For example, if the promissory note on a working capital loan is scheduled to mature in 2 years the loan could be rescheduled for 7 years or the remaining life of the collateral whichever is the lesser of the two.

C. Subsequent loan guarantee requests will be processed in accordance with provisions of §1980.473 of this subpart.

D. If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In these situations when FmHA or its successor

agency under Public Law 103-354 is holder of some of the notes, the State Director may endorse the notes back to the lender after the State Director has sought the advice and guidance of OGC, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will FmHA or its successor agency under Public Law 103-354 endorse the original Form FmHA or its successor agency under Public Law 103-354 449-34 to the lender.

E. The State Director's authority to approve servicing actions is defined in § 1980.469, Administrative D.2.

F. Consultant services may be recommended by the State Director to assist FmHA or its successor agency under Public Law 103-354 and the lender in determining which servicing action is appropriate. Requests for consultant services should be made by the State Director and addressed to the Administrator, Attn: Business and Industry Division. A full explanation of the loan history, an evaluation and scope of the proposed study and the need should be included in the request.

G. When the National Office determines it is necessary on individual cases, due to some special servicing requirements, it may, at its option, assume the servicing responsibility on individual cases.

H. The State Director will report all delinquent and problem loans quarterly to the Director, Business and Industry Division, by the 10th day of January, April, July and October.

I. The State Director will notify the Finance Office by memorandum of any change in payment terms such as reamortizations or interest rate adjustments and effective dates of any changes resulting from servicing actions.

§ 1980.471 Liquidation.

(See § 1980.64 of subpart A of this part.)

Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the lender on liquidations and property management.

(a) Collateral acquired by the lender can only be released after a complete review of the proposal.

(1) There may be instances when the lender acquires the collateral of a business where the cost of liquidation exceeds the potential recovery value of the collection. Whenever this occurs the lender with the concurrence of FmHA or its successor agency under Public Law 103-354 on the collateral in lieu of liquidation.

(2) Sale of acquired collateral to the former borrower, former borrower's stockholder(s) or officer(s), the lender or lender's stockholder(s) or officer(s) must be based on an arm's length transaction with the concurrence of FmHA or its successor agency under Public Law 103-354.

Administrative

A. The State Director determines which FmHA or its successor agency under Public Law 103-354 personnel will attend meetings with the lender.

B. Introduction to Paragraph XI and Paragraph XI B of the Lender's Agreement. FmHA or its successor agency under Public Law 103-354 will exercise the option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When there is reason to believe the lender will not initiate efforts that will maximize recovery through liquidation, the State Director will forward the lender's liquidation plan, if available with appropriate recommendations, along with the State Director's exceptions to the lender's plan, if any, to the Director, Business and Industry Division, for evaluation and approval or rejection of the State Director's recommendation regarding liquidation. Only when compromise cannot be reached between FmHA or its successor agency under Public Law 103-354 and the lender on the best means of liquidation will FmHA or its successor agency under Public Law 103-354 consider conducting the liquidation. The State Director has no authority to exercise the option to liquidate without National Office approval. When FmHA or its successor agency under Public Law 103-354 liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. In such instances the State Director will send to the Finance Office Form FmHA or its successor agency under Public Law 103-354 1980-45, "Notice of Liquidation Responsibility."

C. State Directors are authorized to approve lender liquidation plans as authorized on separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter. Within delegated authorities, the State Director may approve a written partial liquidation plan submitted by the lender covering collateral that must be immediately protected or cared for in order to preserve or maintain its value. Approval of the partial liquidation plan must be in the best interest of the government. The approved partial liquidation plan is only good for those actions necessary to immediately preserve and protect the collateral

and must be followed by a complete liquidation plan prepared by the lender in accordance with the requirements of paragraph XII A of the Lender's Agreement.

D. Paragraph XI D. State Directors are responsible for review and acceptance of accounting reports as submitted by lenders and for submission of such reports to lenders when FmHA or its successor agency under Public Law 103-354 is conducting liquidation, after they have been submitted with the State's recommendations to the Director, Business and Industry Division for prior review.

E. Paragraph XI E 2. State Directors are authorized to approve final reports of loss from the lender in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter. The State Director will submit to the Finance Office for payment any loss claims of the lender on Form FmHA or its successor agency under Public Law 103-354 499-30, "Loan Note Guarantee Report of Loss." The Finance Office forwards loss payment checks to the State Director for delivery to lender. When a loss claim is involved on a particular loan guarantee, ordinarily one "Estimated Loss Report" will be authorized. Only one final "Report of Loss" will be authorized. A final Form FmHA or its successor agency under Public Law 103-354 449-30 must be filed with the Finance Office at the completion of all liquidations. Finance Office will use this form to close out the account.

F. Paragraph XI E 3. Final loss payments will be made within the 60 days required but only after a review by FmHA or its successor agency under Public Law 103-354 to assure that all collateral for the loan has been properly accounted for and liquidation expenses are reasonable and within approved limits. State Directors are responsible to see that such reviews are accomplished by the State within 30 days and final loss claims in excess of the State Director's approval authority are forwarded to be accepted or otherwise resolved by the Director, Business and Industry Division within the 60-day period. Any estimated loss payments made to the lender must be taken into consideration when paying a final loss on the FmHA or its successor agency under Public Law 103-354 guaranteed loan. The estimated loss payment must be treated as a deduction from the principal amount of the loan and interest cannot be accrued on the principal amount of the loan that is equal to the estimated loss payment. Community and Business Program Chiefs (C&BP), Business and Industry Chiefs or Loan Specialists will conduct such reviews. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See Subpart A of Part 1901 of this Chapter) will be submitted to the National Office, Business

and Industry Division, for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the C&BP Chief, B&I Chief or Loan Specialist will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrence which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file. A copy of this report together with the review of the final loss claim will be included in the material sent to the Director, B&I Division, for review prior to approval of final loss payments.

§ 1980.472 Protective advances.

[See § 1980.65 subpart A of this part.]

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the lender on liquidations and property management.

A. Protective advances will not be made in lieu of additional loans, in particular, working capital loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations. Ordinarily, protective advances are made when liquidation is contemplated or in process. A precise rule of when a protective advance should be made is impossible to state. A common, but by no means the only, period when protective advances might be needed is during liquidation. At this point, the borrower and success of the project are no longer of paramount importance, but preserving collateral for maximum recovery is of vital importance. Elements which should always be considered include how close the project is to liquidation or default, how much control the borrower will have over the funds, what danger is there that collateral may be destroyed and whether there will be a good chance of saving the collateral later if a protective advance in contemplation of liquidation is made immediately. A protective advance *must* be an indebtedness of the borrower.

B. The State Director must approve, in writing, all protective advances on loans within his/her loan approval authority which exceed a total cumulative advance of \$500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

C. When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral interests

RHS, RBS, RUS, FSA, USDA**§ 1980.475**

and recovery is actually enhanced by making the advance.

§ 1980.473 Additional loans or advances.

(Refer to paragraph XIII of Form FmHA or its successor agency under Public Law 103-354 449-35.)

Administrative

Only the State Director shall approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee. The State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

§ 1980.474 [Reserved]**§ 1980.475 Bankruptcy.**

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending Chapter 11 case to a liquidating proceeding under Chapter 7 or under Section 1123(b) (4) or seek dismissal of the proceedings.

(5) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(6) FmHA or its successor agency under Public Law 103-354 will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in FmHA or its successor agency under Public Law 103-354's

opinion, FmHA or its successor agency under Public Law 103-354 and the lender will share such appraisal fee equally.

(c) Expenses on Chapter 11 reorganization, liquidating Chapter 11 or Chapter 7 (unless the lender is directly handling the liquidation) cases are not to be deducted from the collateral proceeds.

(d) *Estimated loss payments.* See paragraph XVI of Form FmHA or its successor agency under Public Law 103-354 449-35.

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) for advice on how to interact with the lender on liquidation and property management.

A. It is the responsibility of the State Program Chief to see that FmHA or its successor agency under Public Law 103-354 is being fully informed by the lender in all bankruptcy cases.

B. All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

C. Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Liquidating 11. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral provided the lender is doing the actual liquidation of the collateral as provided by the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If and when liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, the lender cannot claim expenses.

D. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be halted in accordance with the Lender's Agreement and carry the approval of the State Director.

E. The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation

bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

F. The lender is responsible for advising FmHA or its successor agency under Public Law 103-354 of the completion of the Chapter 11 reorganization plan; however, the FmHA or its successor agency under Public Law 103-354 servicing office will monitor the lender's files to ensure timely notification of servicing actions.

G. If an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays in full the remaining balance of the loan as set forth in the plan without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

H. If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA or its successor agency under Public Law 103-354 servicing office immediately. The FmHA or its successor agency under Public Law 103-354 servicing office will then obtain advice from OGC on what actions FmHA or its successor agency under Public Law 103-354 should take.

I. Protective Advances—Authorized protective advances may be included with the estimated loss payment associated with the Chapter 11 reorganization provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy.

J. Adequate Protection—The bankruptcy court can order protection of the collateral while the borrower is in a reorganization bankruptcy. The lender whose collateral is subject to being used by the trustee in bankruptcy should immediately seek adequate protection of the collateral, including petitioning for a super priority.

[54 FR 1598, Jan. 13, 1989]

§ 1980.476 Transfer and assumptions.

(a) All transfers and assumptions will be approved in writing by FmHA or its successor agency under Public Law 103-354. Such transfers and assumptions will be to an eligible applicant.

(b) Transfers and assumptions will be considered without regard to § 1980.451 (d) of this subpart.

(c) The borrower will submit to FmHA or its successor agency under Public Law 103-354 Form FmHA or its successor agency under Public Law 103-354 449-4 for the required character

evaluation prior to the execution of the Assumption Agreement.

(d) Available transfer and assumption options to eligible borrowers include the following:

(1) The total indebtedness may be transferred to another borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial loan can be made.

(3) Less than the total indebtedness may be transferred to another borrower on the same terms.

(4) Less than the total indebtedness may be transferred to another borrower on different terms.

(e) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA or its successor agency under Public Law 103-354 written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

(1) FmHA or its successor agency under Public Law 103-354 must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(2) The FmHA or its successor agency under Public Law 103-354 County Committee must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of borrower's ability.

(f) Any proceeds received from the sale of secured property before a transfer and assumption will be credited on the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption transaction is closed.

(g) When the transferee makes any cash downpayment in connection with the transfer and assumption:

(1) The lender will employ an independent appraiser, subject to concurrence of both the transferor and transferee, to make an appraisal to determine the fair market value of all the

collateral securing the loan. Such appraisal report fee and any other costs related thereto will be paid by the transferor and the transferee as they mutually agree.

(2) The market value of the secured property being acquired by the transferee, plus any additional security the transferee proposes to give to secure the debt, will be adequate to secure the balance of the total guaranteed loan owed, plus any prior liens. If any cash downpayment is made, it may be paid directly to the transferor as payment for equity in the project provided:

(i) The lender recommends and FmHA or its successor agency under Public Law 103-354 approves the case downpayment be released to the transferor. The lender and FmHA or its successor agency under Public Law 103-354 may require that an amount be retained for an established period of time in escrow as a reserve account as security for use against any future default on the loan. Any interest accruing on such an escrow account may be paid periodically to the transferor.

(ii) Any payments that are to be made by the transferee to the transferor in respect to the downpayment do not suspend the transferee's obligation to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(iii) The transferor will agree not to take any actions against the transferee in connection with such transfer in the future without first obtaining the written approval of FmHA or its successor agency under Public Law 103-354 and the lender.

(iv) The lender determines that there is repayment ability for the guaranteed debt assumed and any other indebtedness of the transferee.

(h) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA or its successor agency under Public Law 103-354 review and approval, including any requirement for deposits in an escrow account as security to meet its determined equity requirements for the project.

(i) The lender will issue a statement to FmHA or its successor agency under Public Law 103-354 that the transaction can be properly transferred and the

conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(j) FmHA or its successor agency under Public Law 103-354 will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(k) The assumption will be made on the lender's form of assumption agreement.

(l) The assumption agreement will contain the FmHA or its successor agency under Public Law 103-354 case number of the transferor and transferee.

(m) Loan terms cannot be changed by the Assumption agreement unless previously approved in writing by FmHA or its successor agency under Public Law 103-354, with the concurrence of any holder(s) and concurrence of the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(1) An explanation of the reasons for the proposed change in the loan terms.

(2) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect and all applicable Truth in Lending requirements will be met.

(n) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA or its successor agency under Public Law 103-354 a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA or its successor agency under Public Law 103-354 before any borrower or guarantor is released from liability.

(o) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(p) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the

full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated “report of Loss” on Form FmHA or its successor agency under Public Law 103–354 449–30 to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103–354 449–30, the amount of the debt assumed will be entered on Line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form 449–30, lines 13 and 14.

Administrative

Refer to Appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office) for advice on how to interact with the lender on liquidations and property management.

A. The State Director may approve all transfer and assumption provisions if the guaranteed loan debt balance is within his/her individual loan approval authority including:

1. Consent in writing to the release of the transferor and guarantors from liability.
2. Any changes in loan terms.

NOTE—The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) will be endorsed in the space provided on the form(s).

B. A copy of the Assumption Agreement will be retained in the FmHA or its successor agency under Public Law 103–354 file. The State Director will notify the Finance Office of all approved transfer and assumption cases on Form FmHA or its successor agency under Public Law 103–354 1980–7, “Notice of Transfer and Assumption of a Guaranteed Loan,” and submit Form FmHA or its successor agency under Public Law 103–354 1980–50 for all new borrowers and Form FmHA or its successor agency under Public Law 103–354 1980–51, “Add, Change, or Delete Guaranteed Loan Record,” in order that Finance records may be adjusted accordingly.

C. Any transfer and assumption of less than the total indebtedness must be submitted to the Director, Business and Industry Division, for review and concurrence.

D. If the guaranteed loan debt balance is in excess of the State Director’s loan approval authority, the State Director will forward the file, together with his/her recommendations, to the National Office for approval, ATTN: Business and Industry Division.

§§ 1980.477–1980.480 [Reserved]

§ 1980.481 Insured loans.

Applications from private parties for whom FmHA or its successor agency under Public Law 103–354 and such borrowers agree that a guarantee lender is not available and from public bodies shall be processed as insured loans in accordance with the applicable provisions of this subpart and Subpart A of Part 1942 of this chapter, including the credit elsewhere requirement, except as provided in § 1980.488 of this subpart which provides for the guarantee of taxable bond issues of public bodies. Loans to public bodies will be used only to finance:

(a) Community facilities as defined in § 1980.402 of this subpart, and

(b) Constructing and equipping industrial plants for lease to private businesses (not including loans for operating such businesses) when the requesting loan is not available under Subpart A of Part 1942 of this chapter.

Administrative

A. Without specific written delegated authority, all insured loans require National Office concurrence prior to approval.

B. Applications from private parties for insured loans will not be encouraged.

C. Loan closings on insured loans will be in accordance with this subpart, the Regional Attorney and applicable provisions of Subpart A of Part 1942 of this chapter.

[52 FR 6501, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988]

§§ 1980.482–1980.487 [Reserved]

§ 1980.488 Guaranteed industrial development bond issues.

(a) Loans to public bodies will be guaranteed only in connection with the issuance of any class or series of industrial development bonds (as defined in section 103(c)(2) of the Internal Revenue Code of 1954, as amended (IRC)), the interest on which is included in gross income under IRC. No part of the loan guaranteed by FmHA or its successor agency under Public Law 103–354 may extend to any class or series of industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of such Code. Before the execution of any Loan Note Guarantee, the lender will furnish

FmHA or its successor agency under Public Law 103-354 evidence regarding interest on bonds being taxable for Federal income tax purposes. Such evidence may be in the form of an unqualified opinion of a recognized bond counsel or a ruling from the Internal Revenue Service. Guaranteed loans to public bodies can only be used for constructing and equipping industrial plants for lease to private businesses engaged in industrial manufacturing and does not provide funds for debt refinancing, working capital and other miscellaneous fees, charges or services. The lessee will have to provide necessary capital and sufficient financial strength to provide for a sound project.

(b) If FmHA or its successor agency under Public Law 103-354 and the applicant agree that a guaranteed lender is not available, the application may be considered for an insured loan under the provisions of § 1980.481 of this subpart.

Administrative

The lender is responsible for notifying the FmHA or its successor agency under Public Law 103-354 of the taxability of the proposed bond issue.

§ 1980.489 [Reserved]

§ 1980.490 Business and industry buydown loans.

(a) *Introduction.* This section contains regulations for the Business and Industry Buydown (BIB) loan program. The purpose of this program is to provide loan guarantees with reduced interest rates to the borrowers, under the authority of Public Law 103-50 (107 Stat. 241). All provisions of Subparts A and E of this part apply to BIB loans except as provided in this section. All forms used in connection with a BIB loan will be those used with other B&I loans, except as provided in this section.

(b) *Location of applicants.* Businesses eligible for BIB loans shall be located within the area covered by the Presidential disaster declaration related to Hurricanes Andrew or Iniki or Typhoon Omar.

(c) *Interest rate.* (1) If the interest rate charged by the lender (note rate) on a BIB loan is a variable rate in accordance with § 1980.423 of this subpart, the base rate must be the prime rate as

published in the Wall Street Journal and the note rate must not exceed the prime rate as published in the Wall Street Journal by more than 100 basis points. If the note rate is fixed, it must not exceed by more than 100 basis points the prime rate as published in the Wall Street Journal on the day the Loan Note Guarantee is issued.

(2) The note rate for a BIB loan must be the same for the entire loan, including both the guaranteed and unguaranteed portion.

(d) *Interest rate buydown.* (1) To be eligible for a BIB loan, the business must provide evidence and the lender and FmHA or its successor agency under Public Law 103-354 must determine that, at least for the first year of the loan, the business will not have adequate cash flow to meet all of its financial obligations including the required payments on the proposed loan at the note rate, but that it can meet all obligations if the interest rate is reduced by 100 basis points.

(2) During the first year after a Loan Note Guarantee is issued for a BIB loan, FmHA or its successor agency under Public Law 103-354 will pay one percentage point of interest on the loan directly to the lender, thereby reducing the interest due from the borrower by this amount. This interest payment shall be applied to both the guaranteed and unguaranteed portion of the loan pro rata according to FmHA or its successor agency under Public Law 103-354 regulations.

(3) Interest payments by FmHA or its successor agency under Public Law 103-354 may continue in subsequent years if the borrower's cash flow is insufficient to pay all obligations including the required payments on the proposed loan at the note rate. On or about each yearly anniversary of the promissory note the lender may submit a request to FmHA or its successor agency under Public Law 103-354 for continued interest payments, along with current profit and loss and cash flow statements and cash flow projections to show that the continued payments are needed for another year. FmHA or its successor agency under Public Law 103-354 will promptly review the material submitted, determine whether the continued interest payments by FmHA or its

successor agency under Public Law 103-354 are needed to provide for sufficient cash flow in the coming year, and notify the lender in writing of the determination. Once interest payments by FmHA or its successor agency under Public Law 103-354 are terminated because the borrower's cash flow is determined to be sufficient to pay the note rate, such payments will not be made in subsequent years even if the cash flow decreases.

(4) This section does not authorize interest payments by FmHA or its successor agency under Public Law 103-354 on B&I loans other than those approved under this section. To be eligible for interest payments by FmHA or its successor agency under Public Law 103-354, the loan must be designated as a BIB loan when approved and funded from funds authorized by Public Law 103-50.

(e) *Duration of BIB loan program.* No BIB loan will be obligated after September 30, 1994.

(f) *Administrative procedures.* (1) A lender that wants a B&I application considered under BIB authorities should so indicate by notation on Form FmHA or its successor agency under Public Law 103-354 449-1 or by letter submitted with the Form FmHA or its successor agency under Public Law 103-354 449-1.

(2) FmHA or its successor agency under Public Law 103-354 will identify a loan as a BIB loan by notation in the top margin of Form FmHA or its successor agency under Public Law 103-354 449-29 and by the "type of assistance" code listed on Form FmHA or its successor agency under Public Law 103-354 1940-3, in accordance with the Forms Manual Insert.

(3) FmHA or its successor agency under Public Law 103-354 will set out the interest buydown provisions in accordance with this section in the Conditional Commitment for Guarantee. When the Loan Note Guarantee is issued, the lender and FmHA or its successor agency under Public Law 103-354 will execute Form FmHA or its successor agency under Public Law 103-354 1980-48, "Business and Industry Interest Rate Buydown Agreement."

(4) The lender will request the interest payment from FmHA or its suc-

cessor agency under Public Law 103-354 by submitting Form FmHA or its successor agency under Public Law 103-354 1980-23, "Request for Business and Industry Interest Buydown Payment," to the FmHA or its successor agency under Public Law 103-354 servicing office. Each request must cover exactly 1 year and be filed within 30 days after the anniversary date of the promissory note, except when interest buydown is terminated between anniversary dates. The FmHA or its successor agency under Public Law 103-354 servicing office will review each request for consistency with FmHA or its successor agency under Public Law 103-354 regulations and the Form FmHA or its successor agency under Public Law 103-354 1980-48 and, if the claim is valid, will approve it and forward it to the Finance Office for issuance of the payment to the lender.

(g) *Termination of interest buydown.* When FmHA or its successor agency under Public Law 103-354 purchases a portion of a loan, interest buydown will cease on the entire loan. Interest buydown will also cease upon termination of the Loan Note Guarantee or assumption/transfer of the loan. In the event of any action that causes the interest buydown to terminate, the lender will submit a claim on Form FmHA or its successor agency under Public Law 103-354 1980-23 for interest buydown payments through the date of termination.

(h) *Loan purposes—(1) Refinancing.* Section 1980.452 *Administrative* C.1. (d) of this subpart does not apply to BIB loans if refinancing is needed as a direct consequence of the disaster. In such cases, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(2) *Agriculture.* Section 1980.412 (e) of this subpart does not apply to BIB loans. BIB loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber

or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(3) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(4) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(5) *Meat processing facilities.* The provisions of §1980.411 (a)(8) of this subpart will not apply to BIB loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(i) *Small Business Administration.* Section 1980.451 (c) of this subpart will not apply to BIB loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(j) *Loan guarantee limits.* Notwithstanding the provisions of §1980.420 of this subpart, the guarantee percentage on any BIB loan will not exceed 80 percent.

(k) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have

caused somewhat less equity and/or collateral than would normally be expected for a B&I loan guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(l) *Equity requirements.* The equity requirements of §1980.441 of this subpart do not apply to BIB loans.

(m) *Collateral.* Section 1980.443 Administrative A. 2., 3., and 4. of this subpart will not apply to BIB loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(n) *Conditional approval.* A Form FmHA or its successor agency under Public Law 103-354 449-14 may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA or its successor agency under Public Law 103-354 449-14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA or its successor agency under Public Law 103-354 449-14 will be issued prior to the obligation date established with the Finance Office.

(o) *Financial statements.* All requirements of §1980.451(i)(13) of this subpart will apply except that for BIB loans minimum annual financial statements will be required as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of \$500,000 or

less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of \$500,001 through \$1 million, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than \$1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per § 1980.113 of subpart B of this part.

(p) *Agriculture loans.* The following additional provisions apply to BIB loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* Paragraph (p) of this section contains the regulations for making BIB loans to farmers for agricultural purposes. BIB loans made for agricultural purposes are subject to the provisions in subparts A and E of this part except as specified. In addition, certain sections of subpart B of this part referenced in this section are applicable subject to the limitations outlined in this section. Several key loan processing and loan servicing requirements stipulated in subpart B of this part do not apply to loans made to borrowers under this section.

(2) *Type of guarantee.* BIB loans will be processed under the Loan Note Guarantee option of § 1980.101 (e)(1) of subpart B of this part Only. No loan will be processed for a Contract of Guarantee (Line of Credit) under § 1980.101 (e)(2) of subpart B of this part.

(3) *Farm size.* Loan guarantees may be made under the BIB program without regard to the size of the farming operation.

(4) *Filing and processing preapplications and applications.* If the applicant has already developed material for an FmHA or its successor agency under Public Law 103-354 Farmer Programs loan or if the financial and production information required by

§ 1980.113 of subpart B of this part is needed to document repayment ability or is required by the lender, § 1980.113 of subpart B of this part may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) If the application is submitted solely for a farm as defined in § 1980.106(b) of subpart B of this part, Form FmHA or its successor agency under Public Law 103-354 1980-25, "Farmer Programs Application," or Form FmHA or its successor agency under Public Law 103-354 449-1, will be used as an application for assistance.

(5) *Evaluation of applications.* If the application is developed and processed in accordance with § 1980.113 of subpart B of this part, the provisions outlined in § 1980.114 of subpart B of this part apply with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and his/her rights through inclusion of the Equal Credit Opportunity Act (ECOA) statement. An opportunity will be given for an appeal as set out in subpart B of part 1900 of this chapter.

(iii) When applied to BIB applications, references in § 1980.114 of this part to "County Office" shall normally be construed to mean "State Office." References to "County Supervisor" shall be construed to mean "Business and Industry Chief or Community and Business Programs Chief, or other appropriate FmHA or its successor agency under Public Law 103-354 official as designated by the State Director."

(6) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of

principal may be scheduled for payment after the project is operational and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. Interest will not be deferred and will be due at least annually from the date of the debt instrument. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(7) *Agriculture BIB loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in § 1980.175 (c)(1) of Subpart B of this part except for those stipulated in § 1980.175(c)(1)(iv) and (vii).

(ii) Real estate purposes as outlined in § 1980.180 (c) of Subpart B of this part except for those stipulated in § 1980.180 (c)(1) and (4).

(iii) Refinancing in accordance with paragraph (h)(1) of this section and §§ 1980.411 (a)(11), 1980.451 (i)(19), and 1980.452 Administrative C. (except § 1980.452 Administrative C. 1. (d) of this subpart.

(8) *Sodbuster and swampbuster requirements.* The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

[59 FR 28466, June 2, 1994]

§§ 1980.491–1980.494 [Reserved]

§ 1980.495 FmHA or its successor agency under Public Law 103–354 forms and guides.

The following FmHA or its successor agency under Public Law 103–354 forms and guides, as applicable, are used in connection with processing B&I, D&D, and DARBE loan guarantees; they are incorporated in this subpart and made a part hereof:

(a) Form FmHA or its successor agency under Public Law 103–354 449–1. “Application for Loan and Guarantee,” is referred to as “Appendix A,”

(b) The “Certificate of Incumbency and Signature” is referred to as “Appendix B,”

(c) “Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities” is referred to as “Appendix C,”

(d) “Alcohol Production Facilities Planning, Performing, Development and Project Control” is referred to as “Appendix D,”

(e) “Environmental Assessment Guidelines” is referred to as “Appendix E.”

(f) Form FmHA or its successor agency under Public Law 103–354 449–14, “Conditional Commitment for Guarantee” is referred to as “Appendix F,” and

(g) “Liquidation and Property Management Guide” is referred to as “Appendix G.”

(h) “Suggested Format for the Opinion of the Lender’s Legal Counsel” is referred to as “Appendix H.”

(i) “Instructions for Loan Guarantees for Drought and Disaster Relief” and Forms FmHA or its successor agency under Public Law 103–354 1980–68, “Lender’s Agreement—Drought and Disaster Guaranteed Loans,” 1980–69, “Loan Note Guarantee—Drought and Disaster Guaranteed Loans,” and 1980–70, “Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans,” are referred to as “Appendix I.”

(j) [Reserved]

(k) “Regulations for Loan Guarantees for Disaster Assistance for Rural Business Enterprises” and Forms FmHA or its successor agency under Public Law 103–354 1980–71, “Lender’s Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans,” 1980–72 “Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises Guaranteed Loans,” and 1980–73 “Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans” are referred to as “Appendix K.”

[52 FR 6501, Mar. 4, 1987, as amended at 54 FR 4, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]

§ 1980.496 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1980.497 General administrative.

Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) for advice on how to interact with the OGC on liquidations and property management.

(a) *Office of the General Counsel (OGC).* In performing the FmHA or its successor agency under Public Law 103-354 functions with respect to B&I, D & D, and DARBE loans, the advice and assistance of OGC may be sought and followed on any legal matter. However, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA or its successor agency under Public Law 103-354 has any questions concerning the lender's resolution of these matters, OGC should be consulted. Assistance of OGC will be requested on all loans as specified herein and all liquidations and workouts.

(b) *Contact with OGC.* Initial informal contact with OGC should be made as soon as possible. FmHA or its successor agency under Public Law 103-354 State Directors should use the following format in formally requesting legal assistance on workouts.

(1) *Origination:* All written requests should come from the State Director.

(2) *Method:* Request should be made by referral memorandum to the Regional Attorney setting forth a brief

statement of the facts, the reason assistance is requested, the extent of legal assistance sought, the date when FmHA or its successor agency under Public Law 103-354's response to the lender's liquidation plan (if any) is due and:

(i) *Projected losses on collateral:* e.g., projected losses on collateral are expected to be significant.

(ii) *Unusual or complex nature of primary collateral:* e.g., multi-state foreclosures or foreclosure of leases or general intangibles.

(iii) *Presence of other major creditors or of senior creditors:* e.g., guaranteed loan collateral may be subject to a prior lien or other creditors may have rights in other assets of borrower, such as inventory and accounts receivable.

(iv) *Litigation is pending or threatened:* e.g., bankruptcy, other foreclosure suits.

(3) *Materials to submit:* Referral memorandums will be accompanied by a copy of lender's liquidation plan together with a copy of FmHA or its successor agency under Public Law 103-354's planned response and principal loan papers, conditional commitment for guarantee, guarantee documents and any comments from the National Office. If lender refuses to prepare a plan, the State Director should so state. DO NOT SEND DOCKETS unless specifically requested by OGC.

(c) *Reviews prior to issuance of the loan note guarantee.* After the conditional commitment for guarantee has been issued and proposed with closing documents prepared by the lender and forwarded to FmHA or its successor agency under Public Law 103-354 with the lender's legal counsel's opinion in the suggested format of appendix H of this subpart, but prior to issuing the loan note guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations and indicating any special items, documents or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review in accordance with § 1980.451 Administrative

B 5 of this subpart and indexed and tabbed.

(d) *Please submit the following for OGC review.* Copies of:

(1) Letter from FmHA or its successor agency under Public Law 103-354 National Office authorizing loan guarantee containing conditions (if applicable);

(2) Form FmHA or its successor agency under Public Law 103-354 449-14, including any amendments;

(3) Loan Agreement;

(4) Promissory Notes;

(5) Security documents—Real Estate Mortgage, Security Agreement, Financing Statements, and Leases (if applicable);

(6) Personal or corporation guarantees with related security documents;

(7) Proposed Form FmHA or its successor agency under Public Law 103-354 449-35.

(8) Proposed Form FmHA or its successor agency under Public Law 103-354 449-34.

(9) Proposed Form FmHA or its successor agency under Public Law 103-354 449-36, if any;

(10) Proposed Lender's Certification (§1980.60 of subpart A of this part); and

(11) Opinion of Lender's Counsel in form prescribed by OGC.

(e) *Do not submit for OGC review* feasibility studies, title information, or the original application unless specifically requested to do so.

(f) *OGC advice.* The Regional Attorney will review the docket and furnish advice to FmHA or its successor agency under Public Law 103-354 on whether it may issue the LOAN NOTE GUARANTEE AFTER THE LOAN IS CLOSED. SUCH ADVICE IS FOR THE BENEFIT OF FmHA or its successor agency under Public Law 103-354 ONLY AND DOES NOT RELIEVE THE LENDER OF ITS RESPONSIBILITIES UNDER FmHA or its successor agency under Public Law 103-354 REGULATIONS. The Regional Attorney at his/her option may attend the loan closing. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

(g) *Delegation of authority.* The State Director may delegate those adminis-

trative duties and responsibilities as authorized in the Administrative sections of this subpart, except those specifically reserved to the State Director.

§ 1980.498 Business and Industry Disaster Loans.

(a) *Introduction.* This section contains regulations for the Business and Industry Disaster (BID) loan program. The purpose of the program is to provide loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102-368. These guaranteed loans cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992. No BID loan guarantee will be approved after September 30, 1993. All provisions of subparts A and E of part 1980 of this chapter apply to BID loans, except as provided in this section. All forms used in connection with a BID loan will be those used with other Business and Industry (B&I) loans, except as provided in paragraph (m) of this section.

(b) *Location of Applicants.* (1) Section 1980.405 of this subpart. "Rural area determinations," will not apply to BID loans. BID loans may be made in rural and nonrural areas.

(2) Eligible borrowers' businesses must be located within the area covered by the Presidential declaration except for those with qualifying losses from microburst wind in accordance with paragraph (a) of this section.

(c) *Loan Purposes.* Loans may be guaranteed for the purposes listed in §1980.411 of this subpart, "Loan Purposes," except as follows:

(1) *Relationship to disaster.* The purpose of any BID loan must be to cover costs that are a direct consequence of a natural disaster or microburst of wind in accordance with paragraph (a) of this section. The amount of the loan must not be greater than the amount

needed as determined by the Rural Development Administration or its successor agency under Public Law 103–354 (RDA or its successor agency under Public Law 103–354) to cure problems caused by the natural disaster so that the business is reestablished on a successful basis. Facilities which were damaged or destroyed by the natural disaster may be repaired or replaced by modern facilities as necessary to ensure success. Replacement by modern facilities will not be made solely for the purpose of enlarging the business or increasing its production capacity. No loan for a change of purpose of the business will be guaranteed. Eligible refinancing or working capital loans should not exceed the amount needed to overcome the financial distress caused by the disaster. Losses that were adequately paid by insurance or by loans or grants from other sources will not be covered by BID loans. BID loans may be used to supplement insurance payments and/or assistance from other sources when the insurance coverage or other assistance is not sufficient.

(2) *Refinancing.* Section 1980.452, Administrative C.1.(d) of this subpart does not apply to BID loans. If refinancing is needed as a direct consequence of the disaster, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(3) *Agriculture.* Section 1980.412(e) of this subpart does not apply to BID loans. BID loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(4) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of orna-

mental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(5) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(6) *Meat processing facilities.* The provisions of §1980.411(a)(8) of this subpart will not apply to BID loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(d) *Federal Emergency Management Agency (FEMA).* BID loans may be approved only to the extent that the assistance is not available from FEMA. The case file will be documented to show that FEMA assistance was not available or that FEMA assistance is not adequate to cover the costs as a consequence of the natural disaster.

(e) *Small Business Administration.* Section 1980.451 of this subpart will not apply to BID loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(f) *Loan guarantee limits.* Notwithstanding the provisions of §1980.420 of this subpart, the guarantee percentage on any BID loan will not exceed 80 percent.

(g) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or

collateral than would normally be expected for a B&I guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(h) *Equity requirements.* The equity requirements of §1980.441 of this subpart do not apply to BID loans.

(i) *Feasibility studies.* Feasibility studies as required by §1980.442 of this subpart will not be required for BID loans if the business has a successful financial history that supports future plans and projections that indicate a successful operation with adequate repayment ability.

(j) *Collateral.* Section 1980.443, Administrative A. 2., 3., and 4. of this subpart will not apply to BID loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(k) *Conditional approval.* A Form FmHA or its successor agency under Public Law 103-354 449-14, "Conditional Commitment for Guarantee," may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA or its successor agency under Public Law 103-354 449-14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA or its successor agency under Public Law 103-354 449-14 will be issued prior to the obligation date established with the Finance Office.

(1) *Financial statements.* All requirements of §1980.451(i)(13) of this subpart will apply except that it is modified for BID loans to require minimum annual financial statements as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of \$500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of \$500,001 through \$1,000,000, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than \$1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per §1980.113 of subpart B of part 1980 of this chapter.

(m) *Agriculture loans.* The following additional provisions apply to BID loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* This portion of this section contains the regulations for making BID loans to farmers for agricultural purposes. BID loans made for agricultural purposes are subject to the provisions in subparts A and E of part 1980 of this chapter except as specified. In addition, certain sections of subpart B of part 1980 of this chapter referenced in this section are applicable subject to the limitations outlined in this section. BID loans made for agricultural purposes are made under the Business and Industry authority of section 310B of the Consolidated Farm and Rural Development Act of 1972, as amended. In this regard, several key loan processing and loan servicing requirements stipulated in subpart B of part 1980 of this chapter do not apply to loans made to borrowers under this section. Only the material cross-referenced to subpart B of part 1980 of this chapter is to be utilized in lieu of or in addition

to the requirements contained in subpart E of part 1980 of this chapter in processing loans under this section.

(2) *Type of guarantee.* See § 1980.101(e)(1) of subpart B of part 1980 of this chapter. BID loans will be processed under the Loan Note Guarantee option ONLY. No loan will be processed for a Contract of Guarantee (Line of Credit) under this section.

(3) *Abbreviations and definitions.* (i) The abbreviations and definitions found in § 1980.106 of subpart B of part 1980 of this chapter will apply to loans made under this section except for “family farm,” “related by blood or marriage,” and “subsequent loans.”

(ii) Loan guarantees may be made under the BID program without regard to the size of the farming operation.

(4) *Loan eligibility requirements.* In addition to the requirements set forth in this subpart, the requirements in § 1980.175(b) of subpart B of part 1980 of this chapter regarding controlled substances are applicable.

(5) *Filing and processing preapplications and applications.* If the applicant has already developed material for an FmHA or its successor agency under Public Law 103–354 Farmer Programs loan or if the financial and production information required by § 1980.113 of subpart B of part 1980 of this chapter is needed to document repayment ability or is required by the lender, § 1980.113 of subpart B of part 1980 of this chapter may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) Timeframes for applicant/lender notification in § 1980.113 of subpart B of part 1980 of this chapter do not apply.

(iii) If the application is submitted solely for a farm as defined in § 1980.106(b) of subpart B of part 1980 of this chapter, Form FmHA or its successor agency under Public Law 103–354 410–1, “Application for FmHA or its successor agency under Public Law 103–354 Services,” or Form FmHA or its successor agency under Public Law 103–354 449–1, “Application for Loan and Guarantee,” will be used as an application for assistance.

(6) *Evaluation of applications.* If the application is developed and processed in accordance with § 1980.113 of subpart

B of part 1980 of this chapter, the provisions outlined in § 1980.114 of subpart B of part 1980 of this chapter applies with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and the opportunity given for an appeal as set out in subpart B of part 1900 of this chapter.

(7) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. All accrued interest will be due at least annually from the date of the debt instrument. In no case will interest be deferred. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(8) *BID agriculture loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in § 1980.175(c)(1) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c)(1) (iv) and (vii) of that section.

(ii) Real estate purposes as outlined in § 1980.180(c) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c) (1) and (4) of that section.

RHS, RBS, RUS, FSA, USDA**§ 1980.500**

(iii) Refinancing in accordance with paragraphs (c)(1) and (c)(2) of this section and §§1980.411(a)(11), 1980.451(i)(19) and 1980.452 ADMINISTRATIVE C [except 1980.452 ADMINISTRATIVE C 1(d)] of this subpart.

(9) *Sodbuster and swampbuster requirements*. The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

[57 FR 45969, Oct. 5, 1992, as amended at 58 FR 34342, June 24, 1993; 58 FR 38952, July 21, 1993; 58 FR 41172, Aug. 3, 1993; 58 FR 48300, Sept. 15, 1993]

§ 1980.499 [Reserved]**§ 1980.500 OMB control number.**

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have

been assigned OMB control number 0575-0029. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 58 hours per response, with an average of 4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575-XXXX), Washington, DC 20503.

[55 FR 19245, May 8, 1990]

APPENDIX A TO SUBPART E OF PART 1980—FORM FMHA 49-1, APPLICATION FOR LOAN AND GUARANTEE

Appendix A

Form FmHA 449-1
(Rev. 5-16-83)UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATIONFORM APPROVED
OMB NO. 0575-0021
EXPIRES 10-31-85APPLICATION FOR LOAN AND GUARANTEE
(Business and Industry)FmHA Case Number

General Information: The "Application for Loan and Guarantee" is to provide information needed for the analysis and loan determination process. Tear at perforations for ease in use. Specific references are made in this application to sections of the Business and Industrial Loan Instruction. For complete guidance, see FmHA Instruction 1980-A and 1980-E and related FmHA forms.

Part A — is to be completed by the proposed borrower. The original and two copies with attachments will be submitted to the proposed lender.

Part B — is to be completed by the lender. Upon completion, the original and one copy and attachments of Part A and B will be filed with the FmHA State Office.

PART A

Instructions to Proposed Borrower: Complete items one through 20. Submit original and two copies of this application and all supporting documents to the lender. If additional space is required, provide for by an attachment. Additional information may be obtained from any FmHA Office.

1. NAME: (Show official name without abbreviations unless the abbreviation is a part of the official name. For proprietor or partnership, show name(s) followed by d/b/a and trade name used, if any, and attach a copy of the partnership agreement).

| | | | |
|--|----------|--------------------------|--------------------------------|
| Street | | City | County |
| State | ZIP Code | Telephone Number | Amount of Loan Requested \$ |
| Project Location: City | | Population (Last Census) | County |
| Franchise <input type="checkbox"/> Yes <input type="checkbox"/> No | | State | |
| If Yes, submit copy | | | |

| | | |
|---|---------------------------------------|------------|
| 2. TYPE OF BUSINESS: | Applicant's Tax Identification Number | SIC Number |
| 3. THIS PROJECT IS: <input type="checkbox"/> A new business venture <input type="checkbox"/> Other (Explain) <input type="checkbox"/> A new branch of facility <input type="checkbox"/> An expansion of an existing facility <input type="checkbox"/> Refinancing debts <input type="checkbox"/> Transfer of Ownership | Date Enterprise Established: | |
| 4. VETERAN - For individual or partner indicate if veteran <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, indicate service from _____ to _____ Branch _____ | | |
| 5. CITIZENSHIP - Do you meet the citizenship requirements in FmHA Instruction 1980.403? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| 6. HISTORY OF BUSINESS - Provide a brief description and history of the business (attach additional sheets if necessary). | | |
| | | |
| | | |
| | | |
| | | |

7. COMMUNITY BENEFITS - Comment on the benefits the community will receive if the loan is made (i.e., taxes, jobs and any other benefits).

| |
|--|
| |
| |
| |

Information requested by this form is collected for determining program eligibility and project analysis. Completion of this form is required to obtain the benefit of an FmHA Business and Industry loan guarantee. This statement is furnished pursuant to P. L. 96-511.

8. PREVIOUS FEDERAL, STATE, OR LOCAL FINANCING - List assistance received, requested, or any pending applications. (Include direct, participation, insured, or guarantee loans and grants from any Federal, State, or local sources).

9. LITIGATIONS - List details of any pending or final disciplinary or legal (civil or criminal) action against the proposed borrower, guarantors, partners, principal stockholders and directors.

10. NAMES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PARTIES - List the names of all attorneys, accountants, appraisers, packagers, agents, and all other parties (whether individuals, partnerships, associations) engaged by or on behalf of the proposed borrower (whether on a salary, retainer or fee basis and regardless of the amount of compensation) for the purpose of rendering professional or other services of any nature whatever to proposed borrower, in connection with the preparation or presentation of this application to a lender. List all fees or other charges or compensations paid or to be paid for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the proposed borrower together with a description of such services rendered or to be rendered with complete justification for such purposes. NOTE: all fees and charges are subject to FmHA review and approval and may, in some cases, be paid out of loan proceeds. (See FmHA Instruction 1980.411 and 1980.414).

| Name and Address (Include ZIP Code) | Description of Service Rendered or to be Rendered with complete Justification | Total Compensation Agreed to be Paid* | Compensation Already Paid |
|-------------------------------------|---|---------------------------------------|---------------------------|
| | | | |

*Enter specific dollar amounts or hourly rates. "Unknown," "Undetermined," or other imprecise terms are not sufficient.

11. SUBSIDIARIES AND AFFILIATES - (1) List the name and addresses of all concerns that are subsidiaries, parent organizations, or affiliates of the proposed borrower, including concerns in which the proposed borrower holds a controlling (but not necessarily a majority) interest:

- (2) List all other concerns that are in any way affiliated, by stock ownership, management contracts, or otherwise, with the proposed borrower. The proposed borrower should comment briefly regarding the trade relationship between the proposed borrower and such subsidiaries or affiliates and if the proposed borrower has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconciliation of net worth *(all not more than 60 days old)* must be submitted for all subsidiaries, parent organizations, and affiliates in the same manner as required of the proposed borrower.

12. PURCHASE AND SALES RELATIONS WITH OTHERS - Does proposed borrower buy from, sell to or use the services of, any concern in which an officer, director, major stockholder, or partner, or proprietor of the proposed borrower has a substantial interest? ☐ Yes ☐ No If "Yes" give names of such officer, director, stockholder, and partners, names of such concerns and explain the nature of the transaction(s).

13. RECEIVERSHIP - BANKRUPTCY - Has the proposed borrower or any officer or, partner or director of the proposed borrower, affiliates or any other concern with which such person has been connected ever been in receivership or adjudicated bankrupt? ☐ Yes ☐ No If "Yes" give names, dates and details.

14. DISCLOSURE OF SPECIAL INFORMATION REGARDING PRINCIPALS - (a) List below the names of any FmHA employees who are related by blood, marriage, or adoption, or who have any present or have had any past, direct or indirect, financial interest in or association with, the proposed borrower, or any of its partners, officers, directors, principal stockholders including such interest in other enterprise; (b) When the proprietor, or any partner, officer, director, or their spouse, is an employee of the U.S. Government including members of the armed forces, detailed information shall be submitted with the application. Check box(s) if (a) or (b) is not applicable. ☐ (a) ☐ (b)

| NAMES AND ADDRESS (Include ZIP Code) | Details of Relationship or Interest |
|--------------------------------------|-------------------------------------|
| | |

15. **MANAGEMENT** - Enter names of (a) all owners, partners, key officers, directors or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (b) hired manager, and (c) all other stockholders having 20 percent or more interest in the proposed borrower. Elected officials and managers on applications for loans from public bodies are excluded. Personal guarantees from major stockholders or owners having a major interest in a corporation, and all partners of partnerships usually will be required. If guarantor cannot provide such guarantee due to existing contractual or legal restrictions, explain in an attachment. Final determinations will be made by the FmHA. Attach, in the case of personal guarantee, current financial statements not over 60 days old at time of filing, and for any corporate guarantee, current financial statements not over 90 days old at time of filing and certified by an officer of the corporation. Additional updated financial statements may be required depending on processing time.

| (a) Name | (b) Position or Title | (c) Annual Compensation \$ | (d) % Owner- ship | (e) Outside Net Worth \$ | (f) Personal Guarantee Offered* (Yes or No) | (g) Insurance Carried For Benefit of Applicant |
|-------------|--------------------------------|-------------------------------------|----------------------------|-----------------------------------|---|--|
| | | | | | | |

*If none offered, provide full explanation why guarantee cannot be offered. (See FmHA Instruction 1980.443 (b)).

16. **REGULATORY AGENCIES** - List all regulatory agencies (*National, State, or Local*) which affect this business or project and explain if there are any pending matters with such regulatory agencies. Indicate if permits, licenses or clearance are necessary and their status. (See FmHA Instruction 1980.45 and 1980.451)

17. **INSTRUCTION TO PROPOSED BORROWER** - Attach to this application the following supporting documents. Reference for 1980-A include section 1980.1 thru 1980.100 and reference for 1980-E include sections 1980.401 thru 1980.500:
- (a) Comments from state and local governments, if not already submitted. (See FmHA Instruction 1980.451 (f) (8)).
 - (b) Form FmHA 449-4, "Statement of Personal History," if not already submitted. (See FmHA Instruction 1980.451 (f) (3)).
 - (c) Form FmHA 449-22, "Certification of Non-Relocation and Market and Capacity Information," if applicable. (See FmHA Instruction 1980.412 (c) and (d)).
 - (d) Financial data for new or existing businesses are required in accordance with FmHA Instruction 1980.451 (i) (7) and (8).
 - (e) Aging of accounts receivable and payable. (Use 30, 60, 90 days with individual account explanation of items over 90 days old). (See FmHA Instruction 1980.451 (i) (15)).
 - (f) For companies listed on major stock exchanges and subject to the Securities and Exchange Commission regulations, a copy of the latest SEC 10K report. (See FmHA Instruction 1980.451 (i) (16)).
 - (g) Provide supporting documentation for your projections, including economic factors, markets, management, etc. For loans in excess of \$1 million see FmHA Instruction 1980.442.
 - (h) If construction is involved, (See FmHA Instruction 1980.451 (i) (11)). Final plans and specifications must be submitted to the lender for approval prior to the commencement of construction. Architectural or engineering plans, if applicable, need be attached. (See FmHA Instruction 1980.451 (i) (4) and 1980.454 (d)).
 - (i) If construction is involved, provide applicable equal opportunity and nondiscrimination forms. (See FmHA Instruction 1980.41).
 - (j) Form FmHA 449-10, "Applicant's Environmental Impact Evaluation." (See FmHA Instruction 1980.40 and 1980.451 (i) (3)).

- (k) Evidence whether the project is located in a flood or mudslide hazard area. (See FmHA Instruction 1980.42 and 1980.451 (i) (17)).
- (l) Provide a written statement of effect project would have on Historic Places, if any. (See FmHA Instruction 1980.44 and 1980.451 (i) (15)).
- (m) If application is for health care facility, attach a "Certificate of Need," from appropriate regulatory agency having jurisdiction over the project. (See FmHA Instruction 1980.451 (k)).
- (n) If loan is in excess of \$100,000, provide certification and notices as required for the Clean Air Act and Water Pollution Control Act. (See FmHA Instruction 1980.43).
- (o) Document utilities availability with letter of commitment from utilities, energy, water, sewer, fire and police protection.
- (p) For all persons listed under MANAGEMENT, item 15, provide a brief description of education, technical training, employment and business experience (*resumes may be used*).
- (q) Provide a detailed debt schedule correlated to the latest balance sheet reflecting the name of the creditors, loan purpose, original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secures such loans. You may use Form FmHA 449-29 Attachment I.

18. POLICY AND REGULATIONS CONCERNING REPRESENTATIVES AND THEIR FEES:

- (a) A proposed borrower may obtain the assistance of any attorney, engineer, appraiser, or other representative to aid it in the preparation of its application, however, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title examination, etc.
- (b) There are no "authorized representatives" of FmHA, other than our regular salaried employees. Payment of any fee or gratuity to FmHA employees is illegal and will subject the parties to such a transaction to prosecution.
- (c) FmHA will not approve placement or finder's fees for the use or attempted use of influence in obtaining or trying to obtain a loan.
- (d) Fees which will be approved will be limited to reasonable sums for services actually rendered in connection with the application or the closing, based upon the time and effort required, and the nature and extent of the services rendered by such representative.
- (e) It is the responsibility of the proposed borrower to set forth in Section 10 of this application the names of all persons or firms engaged by or on behalf of the proposed borrower. Proposed borrowers are also required to advise FmHA in writing of the names and fees of any representatives engaged by the proposed borrower subsequent to the filing of the application. Failure to so notify FmHA constitutes "misrepresentation" and will cause FmHA to contest the guarantee if lender had knowledge of this omission.
- (f) Any proposed borrower having any question concerning the payment of fees, or the reasonableness of fees, should communicate with FmHA before the application is filed for a loan guarantee.

19. AGREEMENT OF NONEMPLOYMENT OF FmHA PERSONNEL. In consideration of FmHA guaranteeing any part of the loan applied for in this application, the proposed borrower hereby agrees with FmHA that proposed borrower will not, for a period of two years after date of guarantee of any part of the loan, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an officer, attorney, agent, or employee of FmHA and (b) as such, shall have occupied a position or engaged in activities which FmHA shall have determined, or may determine, involved discretion with respect to the granting of assistance under the Consolidated Farm and Rural Development Act and other acts administered by FmHA from time to time.

20. CERTIFICATION - The proposed borrower hereby certifies that:

- (a) The Proposed borrower has read FmHA policy and regulations concerning representatives and their fees (18 above) and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for other than for services and expenses authorized pursuant to paragraph 18 above.
- (b) The proposed borrower has not paid or incurred any obligation to pay any Government employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. has been solicited by any such employee, the proposed borrower agrees to report such information to the Office of Inspector General, USDA, Washington, D.C. 20250.
- (c) Information contained above and in exhibits attached hereto are true and complete to the best knowledge and belief of the proposed borrower and are submitted for the purpose of requesting FmHA to guarantee a loan by a lender to the proposed borrower. Whether or not the loan herein applied for is approved, the proposed borrower agrees to pay or reimburse the lender for the cost of any surveys, title or mortgage examinations, appraisals, etc., performed by nonlender personnel with consent of the proposed borrower.
- (d) The proposed borrower hereby covenants, promises, agrees and gives herein the ASSURANCE that in connection with any loan to the proposed borrower which FmHA may guarantee as a result of this application, it will COMPLY with the requirements of Executive Order 11245 regarding Equal Credit Opportunity. Proposed borrower further agrees that in the event it fails to comply with said applicable provision, FmHA may cancel, terminate, accelerate repayment of or suspend in whole or in part the financial assistance provided or to be provided by FmHA, and that FmHA or the United States Government may take any other action that may be deemed necessary or appropriate of this ASSURANCE OF COMPLIANCE. These requirements prohibit discrimination on the grounds of race, religion, color, sex, marital status or national origin recipients of Federal financial assistance, including but not limited to employment practices, and require the submission of appropriate reports and access to books and records. These requirements are applicable to all transferees and successors in interest.

NOTICE: In accordance with 5 U.S.C. 552a, the Privacy Act of 1974, any individual should be provided a copy of Form FmHA 410-9, "Statement Required by the Privacy Act," at the time this application is completed.

RHS, RBS, RUS, FSA, USDA

Pt. 1980, Subpt. E, App. A

The proposed borrower hereby agrees to provide the lender and FmHA timely periodic financial statements including the annual financial statement required by FmHA Instruction 1980.451 (j)(13). Failure to provide such reports will be considered a default of the loan in accordance with Form FmHA 449-35, "Lender's Agreement," which is a part of Subpart E of Part 1980, Title 7 CFR.

WARNING: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

Misrepresentation of material facts may also be the basis for denial of credit by the Farmers Home Administration.

*Proposed Borrower Name:

CORPORATE SEAL

By _____

Title _____

Attest: _____

Date Signed: _____, 19__

(Title) (Title)

Proposed Borrower's Contact Person

Name

Address

*(Individual, general partner, trade name, or corporation name).

Telephone

PART B

INSTRUCTIONS: Lender completes item 21 through 33 and submits the original and one copy of this application and all supporting documents to FmHA.

21. **REQUEST FOR GUARANTEE:** **LENDER TAX IDENTIFICATION**
(For use only by lender) NO. _____
 We propose to make and service a loan to the proposed borrower named on page 1 of this application. We request an FmHA loan guarantee subject to the provisions of the applicable FmHA Instructions.

| 22. TERMS AND CONDITIONS OF LOAN: | | | | Percent of Guarantee Requested _____% |
|--|---------------|---------------------|------------------|---------------------------------------|
| (1) <u>Type</u> | <u>Amount</u> | <u>Terms (yrs.)</u> | <u>Interest*</u> | <u>Monthly Payments</u> |
| Real Estate | \$ _____ | _____ yrs. | _____ % | \$ _____ |
| Machinery and Equipment | \$ _____ | _____ yrs. | _____ % | \$ _____ |
| Working Capital | \$ _____ | _____ yrs. | _____ % | \$ _____ |
| Other _____ | \$ _____ | _____ yrs. | _____ % | \$ _____ |
| TOTAL | | | | \$ _____ |

*If the variable rate, follow by a "v" and identify base rate used and what interest differential is added to base rate. If multi-rates are used provide overall effective interest rate for the entire loan: _____%. NOTE: Guaranteed borrower must have the right to prepay their loans. Prepayment penalties are permitted if reasonable and approved by FmHA. Attach amortization schedule for loan.

23. (a) **SOURCE AND USE OF FUNDS:** Loan funds will be disbursed and used for the following purposes, in the following amounts.
- | | | | |
|----------------------------|----------|-------------------------|----------|
| Building and Improvements | \$ _____ | Machinery and Equipment | \$ _____ |
| Land and Rights | _____ | Contingencies | _____ |
| Fees (List below) | _____ | Debt Refinancing* | _____ |
| Legal and Engineering Fees | _____ | Working Capital | _____ |
| Interim Interest | _____ | Other (Specify) _____ | _____ |
- \$ _____

*Attach complete justification for the request (include long and short term debt)

- (b) Describe in detail the source and use of funds from (a) above and any other source of funds for the project and its amount and indicate whether the amounts and sources are proposed or definite.

24. **COLLATERAL AND LIEN POSITION:** (Describe collateral in detail, show whether now owned or to be acquired). (Use Form FmHA 449-2 with appropriate appraisal reports and indicate any prior liens that may exist on the collateral).

25. **PLANNED DISBURSEMENTS:** Record plans for distributing the loan. (See FmHA Instruction 11980.60 and 1980.454).

26. (a) **PERSONAL AND/OR CORPORATE GUARANTEES RECOMMENDED:** (See FmHA Instruction 1980.443).
 (b) **COLLATERAL OFFERED FOR PERSONAL AND/OR CORPORATE GUARANTEES:**

27. **INSURANCE:** (List requirements for Life, Hazard, Federal Flood, and Liability).

28. COMMENTS OF LENDER: *(Attach additional sheets, if necessary).*

- (a) Evaluate proposed borrower's management, past record, repayment ability and other financial analysis.

- (b) State whether any officer, director, stockholder, or employee of the lender has a financial interest in the proposed borrower: or vice versa. If so, give details:

- (c) Is proposed borrower indebted to lender?
- ☐
- Yes
- ☐
- No If yes, provide history of debt repayment and other details:

- (d) List all fees and charges for the loan, including those for preparation of application, servicing, etc. Indicate whether the guarantee fee will be passed on to proposed borrower.
- (See FmHA Instruction 1980.411 and 1980.414).*

- (e) Provide loan servicing plans, including field inspections, frequency of obtaining periodic and annual financial statements and their analysis, use of correspondents or other outside consultants, location of office servicing the loan, and complying with servicing responsibilities set forth in the "Lender's Agreement," Form FmHA 449-35.

29. LOAN AGREEMENT: Attach proposed lender and borrower loan agreement (*See FmHA Instruction 1980.451 (i) (13)*).

30. LENDER'S EXPERIENCE WITH FmHA:

- (a) Have you made any loans guaranteed by FmHA? ☐ Yes ☐ No
 If yes, check program area: ☐ Farmer Programs ☐ Rural Housing ☐ Business and Industry.
 (b) If proposed borrower has or had a loan(s) with you, has such loan(s) appeared in regulatory examination report?
☐ Yes ☐ No If yes, explain.

- (c) Have you ever been debarred from participation in FmHA programs? If yes, explain.

31. Verify and comment on proposed borrower's debt schedule: _____

32. PLANS FOR CONSTITUTING THE LOAN: (*See Form FmHA 449-35, "Lender's Agreement," paragraph III A*).

- (a) Will retain entire loan ☐ Yes ☐ No
 (b) Will utilize secondary market for guaranteed portion (*indicated by check*).
 Assignment _____ Participation _____ Multi-note _____
 (c) Participation of unguaranteed portion ☐ Yes ☐ No
 (*Lender must retain 5% of the unguaranteed portion of loan in its portfolio*).

33. OPINION: In our opinion, the loan has repayment ability, appears feasible and all FmHA requirements in FmHA Instruction 1980-A and 1980-E will be met.

WARNING: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

Misrepresentation of material facts may also be the basis for FmHA not issuing a Loan Note Guarantee.

LENDER:

Contact Person _____

Telephone Number _____

Date _____, 19 _____

By: _____
Authorized Officer

Title

RHS, RBS, RUS, FSA, USDA

Pt. 1980, Subpt. E, App. C

**APPENDIX B TO SUBPART E OF PART
1980—CERTIFICATE OF INCUMBENCY
AND SIGNATURE**

*U.S. Department of Agriculture—Farmers Home
Administration or its successor agency under
Public Law 103-354*

I, _____ (Name) _____,
(Title) _____ of the Farmers
Home Administration or its successor agency
under Public Law 103-354, (FmHA or its
successor agency under Public Law 103-354),
an Agency of the United States Department
of Agriculture, DO HEREBY CERTIFY that
the following person holds the office of
(State Director, State Program Loan Chief,
District Director, or County Super-
visor) _____ of _____, for FmHA or its
successor agency under Public Law 103-354
and that the signature appearing below and
that the signatures appearing above that
person's name on the following described
document is the genuine signature of such
person:

1. Form(s) FmHA or its successor agency
under Public Law 103-354 449-34, "Loan Note
Guarantee," dated _____ relating to loan
made by (Lender's Name) _____ to (Bor-
rower's Name) _____, FmHA or its suc-
cessor agency under Public Law 103-354 Loan
Identification No. _____.

2. Form(s) FmHA or its successor agency
under Public Law 103-354 449-35, "Lender's
Agreement," dated _____ relating to loan
made by (Lender's Name) _____ to
(Borrower's Name) _____, FmHA or
its successor agency under Public Law 103-
354 Loan Identification No. _____.

3. Form(s) FmHA or its successor agency
under Public Law 103-354 449-36, "Assign-
ment Guarantee Agreement," dated _____ re-
lating to loan made by (Lender's
Name) _____ to (Borrower's
Name) _____, FmHA or its successor
agency under Public Law 103-354 Loan Identi-
fication No. _____.

Signature _____ (Name
Type) _____.

In witness whereof, I have hereunto signed
my name this _____ day of _____,
19____.

Farmers Home Administration or its suc-
cessor agency under Public Law 103-354.

By _____
(Title) _____

**APPENDIX C TO SUBPART E OF PART
1980—GUIDELINES FOR LOAN GUAR-
ANTEES FOR ALCOHOL FUEL PRODUC-
TION FACILITIES**

(1) *Alcohol production facility.* An alcohol
production facility is a facility in which al-
cohol, suitable for use by itself or in com-
bination with other substances as a sub-
stitute for petroleum or petrochemical feed-

stocks and not suitable for beverage pur-
poses, is manufactured from biomass.

(2) The alcohol production facility includes
all facilities necessary for the production
and storage of alcohol and the processing of
the by-products of alcohol production. The
intent is to limit the alcohol and by-prod-
ucts processing facilities to those facilities
which are necessary to yield marketable
products and necessary for the financial suc-
cess of the project. Further refinements,
such as gasoline blending or the construction
of facilities which use the alcohol or by-
products in another manufacturing process,
are not considered part of the alcohol pro-
duction facility.

(3) Application will be reviewed by both
B&I personnel and the State Office engineer
and forwarded to the National Office if ap-
proval is recommended.

(4) The applicant should have a startup
tangible book equity of 20-25 percent. (Ap-
praisal surplus and subordinated debt are not
eligible equity items.)

(5) Loan maturity maximums will be as
follows:

Real Estate=15-20 years

Machinery & Equipment=10 years or less de-
pending on the estimated life of the equip-
ment involved

Working Capital=3 years (It is assumed that
the additional equity required for these
projects will provide much of the working
capital needs.)

(6) Farmers Home Administration or its
successor agency under Public Law 103-354
will ordinarily only finance new facilities
and will not get involved in the refinancing
of existing ones.

(7) Priority consideration will be given to
the use of primary fuel other than petroleum
or natural gas.

(8) A positive energy balance must be indi-
cated and supported by appropriate data; i.e.,
the energy content of the alcohol produced
at the alcohol production facility must be
greater than the energy used to produce the
alcohol and by-products.

(9) Plant location, in relation to feed-
stocks, primary fuel and markets for product
and by-products, will be an important con-
sideration.

(10) Debt refinancing will only be consid-
ered in modest amounts and only when nec-
essary to provide a satisfactory lien position.

(11) Feasibility studies are very important
and required and will be prepared by com-
petent and knowledgeable independent par-
ties.

(12) Participating lenders must either have
expertise or the availability of expertise in
this field.

(13) The proposed operating managers must
have experience in this or a related field.

(14) Alcohol Fuel Production Facilities are
eligible for assistance under the Drought and

Disaster (D&D) Guaranteed Loan and Disaster Assistance for Rural Business Enterprises (DARBE) programs described in this subpart, and especially in appendix I and appendix K. Any such loan must meet the requirements for D&D and DARBE loans.

[52 FR 6522, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988; 54 FR 5, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]

APPENDIX D TO SUBPART E OF PART 1980—ALCOHOL PRODUCTION FACILITIES PLANNING, PERFORMING, DEVELOPMENT AND PROJECT CONTROL

(I) *Design Policy.* The borrower shall ensure or cause to be ensured that:

(A) All project facilities are designed utilizing accepted engineering practices and are conformed to applicable Federal, State and local codes and requirements.

(B) Proven equipment and processes are employed in all project facilities unless an exception is granted by the Administrator or designee of the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) ("Administrator") in accordance with paragraph (B)(2) hereof and pilot equipment or processes are used instead.

(1) Equipment and processes shall be considered "proven" if they have been successfully employed in other commercial facilities.

(2) Equipment and processes shall be considered pilot if they have not been used in a commercial operation but have been operated on a scale such that all design and material problems have been identified and resolved and operations maintained to demonstrate that the equipment and process may be successfully applied to the proposed commercial operation. Pilot equipment and processes may be considered for use in the project subject to the following:

(a) The plans, specifications, and operational data for the applicable facilities are reviewed by the Administrator or designee and lender. If, in the opinion of FmHA or its successor agency under Public Law 103-354, the proposed processes or equipment are insufficiently developed to assure reliable and successful operation of the project, proven processes and equipment will be utilized.

(b) If pilot processes or equipment are used, the Administrator or designee will also require that:

(i) Reasonable provision is made in the project for conversion to proven equipment or processes; and

(ii) The borrower agrees to convert to proven equipment or processes if conversion is necessary to protect the interest of the Government in the project. A reserve account for

this conversion may be required. This account will not be an eligible loan purpose.

(C) Facility and equipment design incorporates cost-effective primary fuel systems, energy recovery systems and conservation measures to the maximum extent that this is feasible and consistent with paragraphs (I), (A), and (B) of this appendix.

(II) *Technical Services.*

(A) The borrower is responsible for selecting engineering consultants with suitable experience, training and professional competence in the design and construction of the project to assure that the completed project will operate at the prescribed levels of performance. In discharging its responsibility the borrower will obtain or cause to be obtained:

(1) Full engineering services for design and construction inspection for all project facilities. Resident inspection by qualified persons will be required.

(2) Agreements for engineering or design/build services which describe the project facilities in terms of the parameters critical to the successful operation of the project. The parameters shall include input quantities, conversion efficiency, rate of production and fuel consumption and product quality under normal operating conditions. The design parameters will be mutually agreed upon by the borrower, lender, the State Director and the project engineer, and may not be modified without the written concurrence of each of these parties. These agreements for engineering or design/build services will require, or the borrower will otherwise obtain, assurance satisfactory to the State Director that:

(a) The project engineer will maintain adequate insurance to protect the borrower, lender and the Government from incurring expenses resulting from errors and omissions of the engineer in performance of engineering services.

(b) The project engineer will certify that only proven equipment and processes will be utilized in the proposed development. The State Director may request evidence of successful operations of such proven equipment and process. If proven equipment or processes are not used in the project, the project engineer will identify these items and provide the information necessary for acceptance by the Administrator, borrower and lender in accordance with paragraph (I)(B)(2) of this appendix.

(c) If used equipment or existing facilities are incorporated into the project, they must be inspected by the project engineer or by another qualified engineer of the borrower. This engineer will prepare a report describing the proposed facilities or equipment and will comment on their suitability for use in the project. The report will also identify the modifications necessary for successful integration into the project. A cost estimate will also be included comparing new equipment

and facilities to the proposed existing facilities or used equipment. Consideration must be given to the relative energy requirements of used and new facilities and their relative operation and maintenance costs.

(d) The project engineer or qualified individuals representing the manufacturer of principal equipment (or the designer/builder if the contractor has designed the plant) will visit the plant site at reasonable intervals for a period of one year after substantial completion of the project. Such personnel will be experienced in the proper operation and maintenance of applicable plant components. A report will be presented to the borrower within two weeks of each site visit advising the borrower of operation and maintenance deficiencies. A copy of each report will be forwarded to the State Director and lender by the borrower.

(e) The project engineer will prepare or supervise the preparation of a record drawing of all facilities. One copy will be submitted to the lender and the borrower.

(f) The project engineer or another group acceptable to the State Director and lender will prepare an operation and maintenance manual and assist the borrower in the start-up of the project. The operation and maintenance manual will describe the specific operation and maintenance procedures which must be performed for the project to operate at its rated capacity and efficiency and outline product testing, quality control, plant safety and emergency shut-down procedures.

(g) The project engineer will assist the borrower in determining acceptability of materials, equipment and construction during the construction period, review shop drawings, payment estimates and change orders, and assist in determining substantial completion of the project and final completion of individual contracts.

(1) The project is substantially complete when:

(i) Construction is sufficiently completed in accordance with plans and specifications so that the project may be used for its intended purpose, and;

(ii) The project is producing products of the quantity and quality and at the conversion and energy efficiencies proposed in the completed application submitted by the lender and borrower and approved by the FmHA or its successor agency under Public Law 103-354.

(2) The State Director must concur that the project is substantially complete. The following evidence, in form and substance satisfactory to the State Director and lender, must be submitted prior to such concurrence:

(i) A certificate from the project engineer stating that all facilities are substantially complete. Engineers who design specialized equipment or processes must also certify that construction/fabrication is acceptable

in accordance with plans and specifications previously approved by them. The certification of the project engineer must be based upon a project start-up procedure where the complete project operates continuously to reach steady-state operating conditions. During this period contractors and engineers will identify and correct problems in operations, malfunctions in equipment, failure in materials and defects in workmanship. After this pre-startup, the certifying engineers will monitor project operations for a continuous period of at least 72 hours or 3 consecutive batch runs as appropriate to assure that all equipment is operating satisfactorily at rated capacity and efficiency.

(ii) Copies of system operation and performance data obtained during project start-up.

(iii) Exceptions to substantial completion and a list of nonsubstantial items which must be completed prior to release of any contractor's retainage.

(3) If the project is not producing products of the required quantity or quality at the prescribed conversion efficiencies, even though the project is otherwise physically complete in accordance with paragraph (1)(i) of this subparagraph, the project engineer will prepare a report identifying the corrective actions including an estimate of costs and additional time necessary to meet established performance criteria.

(4) The project must be certified to be substantially complete by an independent engineer if any portion of the project has been designed or constructed by the borrower or the project engineer has participated in any portion of the construction.

(B) Modification of plans and specifications will not be made without the written authorization of the project engineer.

(C) The Administrator, State Director or their representative's acceptance or concurrence in feasibility studies, preliminary engineering reports, plans, specifications, contract documents and payment estimates will not be construed as a representation of the adequacy of same, reliability of cost estimates or quality of construction, nor will such acceptance or concurrence be deemed a waiver of any of the Government's rights or remedies against any person or party. Reviews and construction inspections by the Administrator, State Director or their representatives are solely for the benefit of the Government and do not relieve the lender or borrower of their obligation to conduct project reviews and inspections.

(III) *Project Construction.*

(A) Borrower will not award contracts for the construction of any project facilities unless and until:

(1) The borrower obtains applicable construction permits, right-of-ways, licenses

and approvals of Federal, State and local authorities for the construction of such facilities.

(2) The State Director concurs in applicable plans, specifications and contract documents. Standard contract documents prescribed for use in Federally assisted projects may be used as a guide for determining the minimum standards for contract acceptability. These standard documents are contained in Guides 18 and 19 of subpart A of part 1942 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office).

(B) The borrower has the responsibility, without recourse to the Government, for the settlement and satisfaction of all contractual and administrative issues arising out of procurements. This includes, but is not limited to, disputes, claims, protests of awards, or other matters of a contractual nature. Matters concerning violation of laws are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

(C) The borrower's attorney will review executed contract documents including applicable performance and payment bonds and provide a certificate to the borrower and lender that they have been properly executed and that the persons executing these documents have been properly authorized to do so.

(D) In all contracts for construction or facility improvement awarded in excess of \$100,000, the borrower will require bonds and a bank letter of credit or cash deposit in escrow, assuring performance and payment of 100 percent of the contract cost. The surety will normally be in the form of performance and payment bonds. Such assurance shall remain in full force and effect through any warranty period. Companies providing performance and payment bonds must hold a certificate of authority as an acceptable security on Federal bonds and eligible for listing in Treasury circular 510 as amended and be legally doing business in the State the project is located.

(E) Project Changes. Any change in the project which may affect collateral, its ultimate financial viability or compliance with the conditional commitment must have prior approval of the lender and FmHA or its successor agency under Public Law 103-354.

(1) Construction contracts will require that change orders receive prior approval from the lender when such changes:

- (a) Increase or decrease contract price,
- (b) Materially modify contract provisions,
- (c) Increase or decrease time of completion,
- (d) Affect project performance.

(2) All change orders will be recorded on a chronologically numbered contract change order as they occur. Change orders will not be included in payment estimates until approved by the borrower, project engineer, the

lender and concurred in by FmHA or its successor agency under Public Law 103-354.

(F) Warranty.

(1) All major equipment must be guaranteed by the manufacturer to be free from defects in workmanship and materials for a period of one year after start-up of equipment.

(2) Equipment purchased by a construction contractor or design builder and all other work shall be further warranted to be free from defect in material and workmanship by the contractor or the design builder for a period of one year after substantial completion of the contract.

(3) Applicable provisions to this effect shall be included in equipment purchase orders or construction contracts.

(G) Lease agreements. Where the right of use or control of any property or equipment not owned by the borrower is essential to the successful operation of the project during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property or equipment and the borrower. Lease agreements shall not contain provisions for restricted use of the site or facility, forfeiture or similar cancellation clauses and shall provide for the right to transfer and lease without restriction. Such lease contracts or agreements shall be approved by the lender and FmHA or its successor agency under Public Law 103-354.

(IV) Project Control.

(A) Lender will adopt project control procedures to assure that loan funds are applied for costs or expenses properly attributable to the project ("Eligible Project Costs") as proposed in the completed application submitted by the lender and borrower and approved by the FmHA or its successor agency under Public Law 103-354. A project monitoring account ("Project Monitoring Account") will be developed by lender for this purpose and concurred in by the State Director. This account will be divided into sufficient budget categories to permit adequate control of expenditures and identification of potential budget overruns.

(B) The first advance ("First Advance") of loan funds to the borrower will not commence from the Project Monitoring Account prior to lender's receipt of evidence that:

(1) The borrower has made adequate provisions for compliance with measures established by FmHA or its successor agency under Public Law 103-354 to mitigate adverse historical and environmental impacts.

(2) Applicable engineering, design/build, construction management, inspection and plant start-up service agreements have been obtained and accepted by the State Director and lender.

(3) The project engineer has prepared a detailed cost estimate and construction schedule for all facilities related to the project. This estimate must indicate that the project

can be completed with the funds available as shown on the Form FmHA or its successor agency under Public Law 103-354 449-1, "Application for Loan and Guarantee." A reasonable contingency amount will be included in the estimate. This contingency shall be at least 20 percent of the estimated project costs for which firm bids have not been received plus 5 percent of project costs for which firm bids have been received. Construction interest and inspection costs will be based upon a reasonable contingency for unforeseen delays in project completion. The estimate shall include a listing with associated costs of any proposed leasing arrangements for property or equipment that is essential to the successful operation of the project.

(4) All funds necessary for construction of project facilities will be available when needed.

(5) The borrower has retained a project manager with sufficient experience and training to supervise project construction and engineering services on behalf of the borrower.

(C) After the first advance, future advances may be made from the Project Monitoring Account, in accordance with prudent lender practice, for all Eligible Project Costs established in the Project Monitoring Account, provided these payments are made in accordance with the terms of applicable contracts and are approved by the borrower and, when applicable, recommended by the project engineer.

(D) Payments for Eligible Project Costs incurred by the borrower prior to satisfaction of the conditions precedent to the first advance shall be made with borrower's funds or other nonguaranteed loan funds only. These payments however, may be reimbursed through the Project Monitoring Account as authorized by the State Director after compliance with Paragraph (IV)(B) hereof. The lender will not advance and the borrower will not be entitled to loan funds for reimbursement if such costs or expenses incurred by the borrower prior to the first advance, or at anytime thereafter, were for costs or expenses other than Eligible Project Costs. Costs and expenses accruing from but not limited to, interest charges imposed by construction, equipment, material or service contracts, penalty payments, damage claims, awards or settlements are not Eligible Project Costs unless specifically approved by the State Director.

(E) The lender will monitor the progress of construction and undertake the reviews and project inspections necessary to reasonably assure that funds are paid for Eligible Project Costs and that problems in project development are expeditiously reported to the State Director.

(F) The lender will prepare a monthly report showing the expenditures made from

each budget category of the Project Monitoring Account. This report will include a review of construction progress including proposed and approved contract change orders and, to the extent possible, identify problems or delays in construction or other matters which might affect successful startup of project. This report may be based upon information received from the project engineer and borrower and/or independent observations of the lender. The report will be initiated by the borrower and project engineer and submitted to the State Director.

(G) Transfer of loan funds between established or new categories of the Project Monitoring Account or any change in the total amount of funds committed to the project will be reported by the lender to the State Director as these changes occur.

APPENDIX E TO SUBPART E OF PART 1980—ENVIRONMENTAL ASSESSMENT GUIDELINES

In completing an assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project and its operation and maintenance. The attainment of the project's major objectives often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The impacts of these activities must also be assessed.

The environmental reviewer should consult with appropriate experts from Federal, State and local agencies, universities and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact should be summarized in the assessment as accurately as possible and include name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The Farmers Home Administration or its successor agency under Public Law 103-354 assessment should be prepared in the following format; it should address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant.

These assessment guidelines have been designed to cover the wide variety of impacts which may be encountered. Consequently, not every issue or potential impact raised in these guidelines may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors and

issues which may be encountered. In preparing an assessment, each topic heading identified by a roman numeral and each environmental factor listed under topic heading IV, such as air quality for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

(I) *Project description and need.* Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA or its successor agency under Public Law 103-354's position regarding the need for it, and the extent or area of land to be considered as the project site.

(II) *Primary beneficiaries and related activities.*

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of an FmHA or its successor agency under Public Law 103-354 action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA or its successor agency under Public Law 103-354 action or are themselves induced or supported by the FmHA or its successor agency under Public Law 103-354 action or another related activity. These activities may have been completed in the very recent past and are now operational or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be Federally permitted or assisted. When they are, identify the involved Federal agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

(III) *Description of project area.* Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residen-

tial, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats, or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey "15 minute" ("7½ minute" if available) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4) if completed, a standard soil survey for the project and, (5) if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

(IV) *Environmental impact.*

(1) *Air Quality*—Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersals of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality and topographical and meteorological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

(2) *Water Quality*—Discuss, in terms of amounts and types of effluents all aspects of the project, including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evaluate the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by the Environmental Protection Agency (EPA), contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity

and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA or its successor agency under Public Law 103-354 project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 areawide waste treatment management plan. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

(3) Solid Waste Management—Indicate all aspects of the project, including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy to these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

(4) Land Use—Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to the unique or sensitive areas discussed under Section III, Description of Project Area. Also address any changes in land use which may result from demand for

feedstock for the plant's operation. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts with these plans.

(5) Transportation—Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

(6) Natural Environment—Indicate all aspects of the project, including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

(7) Human Population—Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc., will effect nearby residents and their lifestyles or users of the project area and surrounding areas. Cite contacts with appropriate experts.

(8) Construction—Indicate the potential effects of construction of the project on air quality, water quality noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

(9) Energy Impacts—Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

(10) Discuss any of the following areas which may be relevant: noise, vibrations,

safety, seismic conditions, fire prone locations, radiation, and aesthetic considerations. Cite any discussions with appropriate experts.

(V) *Coastal Zone Management Act.*

Indicate if the project is within or will impact a coastal area defined as such by the state's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings.

(VI) *Compliance with Advisory Council on Historic Preservation's regulations.*

In this section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in Subpart F of Part 1901 of this Chapter. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the Advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the assessment the results of the coordination process with the Advisory Council on Historic Preservation.

(VII) *Compliance with the Wild and Scenic Rivers Act.*

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the System. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. A summary of discussions held or any required formal coordination shall be included in the assessment.

(VIII) *Compliance with the Endangered Species Act.*

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the con-

tinued existence of a proposed endangered or threatened species. This analysis shall be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

(IX) *Compliance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.*

Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resource Council's *Floodplain Management Guidelines* for more specific guidance.

(X) *State Environmental Policy Act.*

Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation.

(XI) *Consultation requirements.*

Attach the comments of any State or local agency received through the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs.

(XII) *Environmental analysis of participating Federal agency.*

Indicate if another federal agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved agency's environmental impact analysis and attach available documentation.

(XIII) *Reaction to project.*

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA or its successor agency under Public Law 103-354 to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

(XIV) *Cumulative impacts.*

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the

results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

(XV) Adverse impact.

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

(XVI) Alternatives.

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative location, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project.

(XVII) Mitigation measures.

Describe any measures which will be taken or required by FmHA or its successor agency under Public Law 103-354 to avoid or mitigate the identified adverse impacts. Such measures shall be included as special requirements or provisions to the offer of financial assistance.

APPENDIX F TO SUBPART E OF PART
1980—CONDITIONAL COMMITMENT FOR
GUARANTEE

USDA-FmHA OR ITS SUCCESSOR AGENCY
UNDER PUBLIC LAW 103-354

Form FmHA or its successor agency under
Public Law 103-354 449-14

(Rev. 12-89)

FORM APPROVED

OMB NO. 0575-0024

TO: Lender _____

Case No. _____

Lender's Address _____

State _____

Borrower _____

County _____

Type of Loan _____

Principal Amount of Loan _____

\$ _____

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) hereby agrees that, in accordance with applicable provisions of the FmHA or its successor agency under Public Law 103-354 regulations published in the Federal Register and related forms, it will execute Form(s) FmHA or its successor agency under Public Law 103-354 449-34, "Loan Note Guarantee," subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the Lender to FmHA or its successor agency under Public Law 103-354 will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is ¹ _____ % and, if applicable, the loan subsidy rate is _____ %¹. If a variable rate is used, it must be tied to a base rate which cannot change more often than _____² and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA or its successor agency under Public Law 103-354's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA or its successor agency under Public Law 103-354. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out on the Request for Loan Note Guarantee, the Request for Guarantee Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan, or the Application for Loan and Guarantee. Once this instrument is executed and returned to FmHA or its successor agency under Public Law 103-354, no major change of conditions or approved loan purpose as listed on the forms will be considered. Additional Conditions and Requirements including Source and Use of Funds:³

This conditional commitment will expire on _____⁴ unless the time is extended in writing by FmHA or its successor agency under Public Law 103-354, or upon the Lender's earlier notification to FmHA or its successor agency under Public Law 103-354 that it does not desire to obtain an FmHA or its successor agency under Public Law 103-354 guarantee.

UNITED STATES OF AMERICA

BY: _____

Date: _____

¹Footnotes appear at the end of Form.

Pt. 1980, Subpt. E, App. H

7 CFR Ch. XVIII (1-1-09 Edition)

FmHA or its successor agency under Public Law 103-354 (*Title*) _____

ACCEPTANCE OF CONDITIONS

To: Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354)⁵

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within _____ days.

(Name of Lender)

By: _____

(Signature of Lender)

⁶ _____

(Signature for Borrower)

¹Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan subsidy rate, if applicable.

²Insert the period prescribed in the applicable FmHA or its successor agency under Public Law 103-354 regulation. For B&I loans "quarterly" and for CP loans "annually" will be inserted in this space.

³Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE".

⁴FmHA or its successor agency under Public Law 103-354 will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

⁵Return completed and signed copy of this form to FmHA or its successor agency under Public Law 103-354 issuing office.

⁶Required in B&I, CP, and RH-MF cases, not in other cases.

[55 FR 11139, Mar. 27, 1990]

**APPENDIX G TO SUBPART E OF PART 1980
[RESERVED]**

**APPENDIX H TO SUBPART E OF PART 1980—SUGGESTED FORMAT FOR THE
OPINION OF THE LENDER'S LEGAL
COUNSEL**

(Legal Opinion to be Retyped on Lender's Counsel's Letterhead)

To: (Name of Lender).

I/We have acted as counsel to (Lender) _____ in connection with a \$ (amount) _____ (type) _____ loan by the (Lender) _____ (hereinafter "the Lender" to (Borrower) _____ (hereinafter "Borrower")), the

terms of which loans are set forth in a certain Loan Agreement (hereinafter "the Loan Agreement") executed by the Lender and Borrower on (date) _____.

In connection with this loan, I/we have examined:

1. The corporate records of Borrower, including its Articles of Incorporation, By-Laws and Resolutions of its Board of Directors.

2. The Loan Agreement between the Lender and Borrower.

3. The Security Agreement executed by Borrower on (date) _____.

4. The Guaranty (where applicable) executed on (date) _____ by (personal guarantors) _____.

5. Financing Statements executed by Borrower and the Lender.

6. Real Estate Mortgages dated _____ and executed by Borrower in favor of the Lender.

7. Real Estate Mortgages dated _____ and/or other security documents dated _____ executed by (personal guarantors) _____ in favor of the Bank.

8. The appropriate title and/or lien searches relating to Borrower's property.

9. The pledge of stock and instruments related thereto.

10. Such other materials, including relevant provisions of the laws of this state as I/we have deemed pertinent as a basis for rendering the opinion hereafter set forth.

In Some Circumstances

11. Lease(s) between Borrower and (lessor's name) _____ for the rental of (property being rented) _____, (if real property, give the address of the premises; if machinery equipment, etc., give brief, precise description of property for a (length of lease) _____ term commencing on (date) _____.

Based on the foregoing examinations, I am/we are of the opinion and advise you that:

1. Borrower is a duly organized corporation in good standing under the laws of the Commonwealth/State of (State) _____.

2. Borrower has the necessary corporate power to authorize and has taken the necessary corporate action to authorize the Loan Agreement and to execute and deliver the Note, Security Agreement, Financing Statement, and Mortgage. Said instruments hereinafter collectively referred to as the "Loan Instruments."

3. The Loan Instruments were all duly authorized, executed, and delivered and constitute the valid and legally binding obligation of the Borrower and collectively create and valid (first) lien upon or valid security interest in favor of the Lender, in the security covered thereby, and are enforceable in accordance with their terms except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not and will not in any material respect conflict with, constitute default under, or contravene any contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.

5. All applicable Federal, State and local tax returns and reports as required have been duly filed by Borrower and all Federal, State and local taxes, assessments and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.

6. The guaranty has been duly executed by the Guarantors and is a legal, valid and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.

8. (In cases involving subordinate or other than first lien position) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g., machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts, receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgagee) _____ given as security for a loan in the amount of \$ _____ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) _____ given to (secured creditor) _____ as security for a loan (state type of loan, i.e., revolving line of credit, _____ if known) in the amount of \$ _____.

9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.

10. There are no actions, suits or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.

11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.

12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.

13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.

14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.

15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreement has been duly executed by the Indemnitors and is a legal, valid and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

16. That the lease contains a valid and enforceable right of assignment and right of re-assignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates or other instruments where such notations are required for proper perfection of security interests therein.

18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

[52 FR 6522, Mar. 4, 1987]

APPENDIX I TO SUBPART E OF PART 1980—INSTRUCTIONS FOR LOAN GUARANTEES FOR DROUGHT AND DISASTER RELIEF

A. *In general.* Drought and Disaster (D&D) guaranteed loans are authorized by section 331 ("Disaster Assistance for Rural Business Enterprises") of the Disaster Assistance Act of 1988, which provides for guarantees of up to 90 percent of the unpaid principal amount of qualifying loans. Interest and protective advances are not covered by the guarantee. Drought and Disaster Guaranteed Loans may be either to assist in alleviating financial

distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to assist such entities that re-finance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term "natural disaster(s)" refers only to drought, hail, excessive moisture, and related conditions occurring in 1988. All provisions of Subparts A and E of Part 1980 of this chapter apply to D&D loans, except as provided in this appendix. All forms used in connection with a D&D loan will be those used in connection with a B&I guaranteed loan, except for the following three forms that are incorporated in this Appendix I of this Subpart E, made a part hereof, and appear in the FEDERAL REGISTER following the body of this appendix as Exhibits A, B, and C in the following order:

(1) Form FmHA or its successor agency under Public Law 103-354 1980-68, "Lender's Agreement—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-35, "Lender's Agreement."

(2) Form FmHA or its successor agency under Public Law 103-354 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-34, "Loan Note Guarantee."

(3) Form FmHA or its successor agency under Public Law 103-354 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-36, "Assignment Guarantee Agreement."

B. *Loan purpose.* Except for §§ 1980.411(a)(11), 1980.412, and section C., below, loan proceeds may be used for purposes described in § 1980.411(a) if such use of loan proceeds will assist in alleviating financial distress caused, directly or indirectly, by drought, hail, excessive moisture, or related conditions which occurred in 1988. In lieu of the debt refinancing requirements in § 1980.411(a)(11), the following refinancing requirements apply to D&D loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, hail, excessive moisture, or related condition occurring in 1988, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. In addition, D&D loan proceeds may be used for hotels, motels, tourist or recreation facilities which meet the eligibility requirements for D&D guaranteed loans.

C. *Ineligible loan purposes.* See § 1980.412. Except for hotels, motels, tourist and recreation facilities mentioned in section B of

this appendix, purposes listed as ineligible B&I loan purposes are ineligible D&D loan purposes. In addition, D&D guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the D&D guaranteed loan.

(2) Any eligible agricultural production purpose if annual tillage of the soil is involved.

(3) Refinancing or restructuring debt(s) which are or were in payment default more than 60 consecutive days during the 12 months preceding the date of the adverse financial effect of the natural disaster of 1988 upon the borrower.

D. *Transactions which will not be guaranteed.* In addition to transactions listed in § 1980.413, FmHA or its successor agency under Public Law 103-354 will not guarantee:

(1) D&D guaranteed loan(s) to any borrower if the total cumulative principal amount of D&D guaranteed loan(s) to that borrower would exceed \$500,000, or

(2) Any D&D guaranteed loan if the completed application is not received by FmHA or its successor agency under Public Law 103-354 on or before September 30, 1991.

E. *Borrower equity requirements.* See § 1980.441. In lieu of the borrower equity requirements in § 1980.441, paragraphs (a) and (b), the following applies to D&D loans. Tangibles balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of § 1980.441(c) apply to D&D guaranteed loans.

F. *Filing and processing preapplications and applications.* See § 1980.451. All requirements of § 1980.451 remain in effect. But, in addition to the information required as part of a preapplication under § 1980.451(f), and unless previously submitted, as a part of an application under § 1980.451(i) evidence is required which demonstrates:

(1) The causal relationship between a 1988 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business

interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be shown that business operations were damaged as a result of such natural disaster.

G. *Loan guarantee limit.* See §1980.20 of Subpart A. The maximum loss covered by the Loan Note Guarantee, Form FmHA or its successor agency under Public Law 103-354 1980-69, can never exceed the percentage of guarantee multiplied by the unpaid principal amount of the loan as evidenced by the note(s) or by assumption agreement(s). Interest, capitalized interest, and protective advances are not covered by the guarantee of a D&D loan.

H. *Percentage of guarantee.* See §1980.420. The maximum percentage of guarantee on a D&D loan is 90 percent of the unpaid principal.

I. *Lender's existing unguaranteed exposure.* The provisions of §1980.452 Administrative C. 1(d) do not apply.

J. *No direct or "insured" loans.* Sections 1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with "insured" or direct loans do not apply to D&D loans. All D&D loans are FmHA or its successor agency under Public Law 103-354 guaranteed loans. FmHA or its successor agency under Public Law 103-354 has no authority to make D&D loans directly to borrowers.

EXHIBIT A TO APPENDIX I—LENDER'S AGREEMENT; DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)¹

Form FmHA or its successor agency under Public Law 103-354 1980-68 (11-88)

FmHA or its successor agency under Public Law 103-354 Loan Ident. No. _____

(Lender) of _____

¹Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, DC 20503.

has made a loan(s) to _____

(Borrower) _____

in the principal amount of \$ _____
as evidenced by _____ note(s) (include Bond as appropriate) described as follows: _____

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) has entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee)" (Form FmHA or its successor agency under Public Law 103-354 1980-69) or has issued a "Conditional Commitment for Guarantee" (Form FmHA or its successor agency under Public Law 103-354 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement. The maximum loss guaranteed is governed by 7 CFR Part 1980 Subpart E Appendix I and the Loan Note Guarantee (Drought and Disaster Guaranteed Loans)

The Parties Agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal (Maximum \$ _____).

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement Drought and Disaster Guaranteed Loan (Assignment Guarantee Agreement) attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103-354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor

agency under Public Law 103-354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan. A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA or its successor agency under Public Law 103-354 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan." Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103-354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103-354 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loan" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public Law 103-354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103-354 will provide the Lender with a Form FmHA or its successor

agency under Public Law 103-354 1980-69, for each of the notes.

b. *After Loan Closing:* (1) Upon written approval by FmHA or its successor agency under Public Law 103-354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103-354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103-354 will issue the appropriate Loan Note Guarantees—Drought and Disaster Guaranteed Loan to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee—Drought and Disaster Guaranteed Loan which will be cancelled by FmHA or its successor agency under Public Law 103-354.

3. *Participations.* a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its portfolio or retain a minimum of 5 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan to the extent of the portion of loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan, and this agreement, and the FmHA or its successor agency under Public Law 103-354 program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA or its successor agency under Public Law 103-354 program regulations not

inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA or its successor agency under Public Law 103-354 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders, or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower. Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103-354 has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing. A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA or its successor agency under Public Law 103-354. Subsequent to full disbursement completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103-354's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA or its successor agency under Public Law 103-354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103-354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103-354's written concurrence. It is the Lender's responsibility to maximize the collection of interest due on the loan. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase from the Holder(s) by FmHA or its successor agency under Public Law 103-354 if such interest can be collected. If FmHA or its successor agency under Public Law 103-354 has repurchased, FmHA or its successor agency under Public Law 103-354 is equally so entitled.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency under Public Law 103-354; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to \$_____ without written concurrence of FmHA or its successor agency under Public Law 103-354; the

Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA or its successor agency under Public Law 103-354 at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103-354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103-354.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103-354 regulations.

10. Providing FmHA or its successor agency under Public Law 103-354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103-354 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103-354 office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Default. A. The Lender will notify FmHA or its successor agency under Public Law 103-354 when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103-354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103-354 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA

or its successor agency under Public Law 103-354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103-354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA or its successor agency under Public Law 103-354's, Lender's, and the Holder(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103-354. The lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103-354 of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103-354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion within 30 days after written demand to FmHA or its successor agency under Public Law 103-354 from the Holder(s). The loan note guarantee will not cover the note interest to the Holder

on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103-354. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or its successor agency under Public Law 103-354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103-354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103-354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal, due (no capitalized interest).

The Holder will also inform FmHA or its successor agency under Public Law 103-354 of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase by FmHA or its successor agency under Public Law 103-354 from the Holder(s) if such interest is or can be collected. If FmHA or its successor agency under Public Law 103-354 has purchased, FmHA or its successor agency under Public Law 103-354 is equally entitled.

The FmHA or its successor agency under Public Law 103-354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103-354 office servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103-354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103-354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103-354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103-354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public Law 103-354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103-354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due to the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103-354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103-354 arising from said loan or guarantee, nor does such purchase waive any of FmHA or its successor agency under Public Law 103-354's rights against Lender, and FmHA or its successor agency under Public Law 103-354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103-354 from the Holder against FmHA or its successor agency under Public Law 103-354's obligation to Lender under the Loan Note Guarantee. To the extent FmHA or its successor agency under Public Law 103-354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103-354 repurchases from a Holder, FmHA or its successor agency under Public Law 103-354 will pay the Holder only the amounts due the Holder. FmHA or its successor agency under Public Law 103-354 will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103-354 and no such fee is collectible from FmHA or its successor agency under Public Law 103-354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103-354. When FmHA or its successor agency under Public Law 103-354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103-354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provision in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 will be notified immediately in writing. FmHA or its successor agency under Public Law 103-354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103-354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103-354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103-354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103-354 with:

1. Such proof as FmHA or its successor agency under Public Law 103-354 requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding loan balance including accrued interest is less than \$200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of \$200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103-354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103-354 and the Lender.

B. FmHA or its successor agency under Public Law 103-354's response to Lender's liquidation plan. FmHA or its successor agency under Public Law 103-354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If

FmHA or its successor agency under Public Law 103-354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103-354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103-354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103-354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103-354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103-354 all rights and interests necessary to allow FmHA or its successor agency under Public Law 103-354 to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA or its successor agency under Public Law 103-354.

2. FmHA or its successor agency under Public Law 103-354 will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103-354 include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA or its successor agency under Public Law 103-354, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or its successor agency under Public Law 103-354 or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA or its successor agency under Public Law 103-354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103-354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103-354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103-354 1980-43, "Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103-354." When FmHA or its successor agency under Public

Law 103-354 liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103-354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103-354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103-354. Payment will be made in accordance with applicable FmHA or its successor agency under Public Law 103-354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103-354 an estimate of the loss that will occur in connection with liquidation of the loan. FmHA or its successor agency under Public Law 103-354 will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA or its successor agency under Public Law 103-354 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA or its successor agency under Public Law 103-354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103-354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103-354 449-30 by the Lender to FmHA or its successor agency under Public Law 103-354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103-354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103-354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise

assist FmHA or its successor agency under Public Law 103-354 in making the investigation. If FmHA or its successor agency under Public Law 103-354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103-354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA or its successor agency under Public Law 103-354 will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103-354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103-354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103-354 has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

F. *Maximum amount of interest loss payment.* Interest is not covered by the guarantee.

G. *Application of FmHA or its successor agency under Public Law 103-354 loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA or its successor agency under Public Law 103-354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA or its successor agency under Public Law 103-354 449-30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103-354 in order to close out the files at the FmHA or its successor agency under Public Law 103-354 Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral

unless the costs have been previously determined by the Lender (with FmHA or its successor agency under Public Law 103-354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103-354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA or its successor agency under Public Law 103-354 within 60 days after the review of the accounting of the collateral.

XII. *Protective Advances.* Protective advances will not be covered by the guarantee.

XIII. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103-354 even though such expenditures or loans will not be guaranteed.

XIV. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103-354, any future funds which may be recovered by the Lender, will be pro-rated between FmHA or its successor agency under Public Law 103-354 and the Lender. FmHA or its successor agency under Public Law 103-354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. *Transfer and Assumption Cases.* Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guarantee portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103-354 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery).

XVI. *Other Requirements.* This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103-354 regulations not inconsistent with this agreement.

XVII. *Execution of Agreements.* If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103-354 with respect to execution of such contract. FmHA or its successor agency under Public Law 103-354 in no way warrants that such a contract has been or will be executed.

XVIII. *Notices.* All notices and actions will be initiated through FmHA or its successor agency under Public Law 103-354 for—

(State) with mailing address at the
Date of this instrument _____

Dated this _____ day of _____, 19____.

Lender:

By _____

Title _____

United States of America

Farmers Home Administration or its successor agency under Public Law 103-354

By _____

Title _____

Attest: _____ (SEAL)

EXHIBIT B TO APPENDIX I—LOAN NOTE GUARANTEE; DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)

*Form FmHA or its successor agency under
Public Law 103-354 1980-69 (11-88)*

Borrower _____

Lender _____

Lender's Address _____

State _____

County _____

Date of Note _____

FmHA or its successor agency under Public
Law 103-354 Loan Identification Number _____

Lender's IRS ID Tax Number _____

Principal Amount of Loan \$ _____

The guaranteed portion of the loan is
\$ _____ which is (____%)

percent of loan principal. The principal
amount of loan is evidenced by _____ note(s)
(includes bonds as appropriate) described
below. The guaranteed portion of each note
is indicated below. This instrument is at-
tached to note _____ in the face amount of
\$ _____ and is number _____ of _____.

Lender's Identifying Number _____

Face Amount _____

Percent of Total Face Amount _____

Amount Guaranteed _____

Maximum Loss Guaranteed Governed by 7
CFR Part 1980, Subpart E, Appendix I

Total \$ _____ 100% \$ _____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103-354 of the United States Department of Agriculture (herein called "FmHA or its successor agency under Public Law 103-354"), pursuant to the Disaster Assistance Act (P.L. 100-387, 7 USC) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including principal indebtedness as evidenced by said note(s) or by assumption agreement(s), or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) (Maximum \$ _____). No capitalized interest is guaranteed.

Definition of Holder. The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA or its successor agency under Public Law 103-354 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," is used.

Definition of Lender. The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 CFR Part 1980. The Lender is also the party requesting a loan guarantee.

Conditions of Guarantee

1. *Loan Servicing.* Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. *Priorities.* The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103-354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103-354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. *Rights and Liabilities.* The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA or its successor agency under Public Law 103-354 of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA or its successor agency under Public Law 103-354 any payment made by FmHA or its successor agency under Public Law 103-354 to Holder which if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 would not be required to make.

5. *Payments.* Lender will receive all payments of principal, or interest, on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. *Protective Advances.* Protective advances made by Lender will not be guaranteed.

7. *Repurchase by Lender.* The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest

due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103-354. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103-354 of its decision.

8. FmHA or its successor agency under Public Law 103-354 Purchase. If Lender does not repurchase as provided by paragraph 7 hereof, FmHA or its successor agency under Public Law 103-354 will purchase from Holder the unpaid principal balance of the guaranteed portion less Lender's servicing fee, within thirty (30) days after written demand to FmHA or its successor agency under Public Law 103-354 from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103-354. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or its successor agency under Public Law 103-354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103-354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103-354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal due (no capitalized interest).

The Holder will also inform FmHA or its successor agency under Public Law 103-354 of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due to the point of repurchase by the Lender or purchase by FmHA or its successor agency under Public Law 103-354 from the Holder(s) if such interest is or can be collected. If FmHA or its successor agency under Public Law 103-354 has purchased, FmHA or its successor agency under Public Law 103-354 is equally entitled.

The FmHA or its successor agency under Public Law 103-354 will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly

provide the FmHA or its successor agency under Public Law 103-354 with the information necessary for FmHA or its successor agency under Public Law 103-354 determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103-354 will notify both parties who must resolve the conflict before payment of FmHA or its successor agency under Public Law 103-354 will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103-354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations.* Lender consents to the purchase by FmHA or its successor agency under Public Law 103-354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103-354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed by any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103-354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103-354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103-354's rights against Lender, and that FmHA or its successor agency under Public Law 103-354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103-354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103-354's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing.* If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans.

RHS, RBS, RUS, FSA, USDA

Pt. 1980, Subpt. E, App. I

a. The lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103-354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103-354 at its option may purchase such guaranteed portions for servicing purposes.

11. *Custody of Unguaranteed Portion.* The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. *When Guarantee Terminates.* This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA or its successor agency under Public Law 103-354 that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA or its successor agency under Public Law 103-354.

13. *Settlement.* The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. *Notices.* All notices and actions will be initiated through the FmHA or its successor agency under Public Law 103-354 for _____ (State) with mailing address at the date of this instrument:

United States of America
Farmers Home Administration or its successor agency under Public Law 103-354

By: _____
Title: _____
(Date)

Assumption Agreement by _____
dated _____, 19____
Assumption Agreement by _____
dated _____, 19____

EXHIBIT C TO APPENDIX I—ASSIGNMENT GUARANTEE AGREEMENT—DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)¹

FmHA or its successor agency under Public Law 103-354 Loan Ident. No. _____

¹Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data

Form FmHA or its successor agency under Public Law 103-354 1980-70 (11-88)

of _____
(Lender) has made a loan to _____
in the principal amount of \$ _____
as evidenced by a note(s) dated _____
The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee) (Form FmHA or its successor agency under Public Law 103-354 1980-69) with the Lender applicable to such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced.

of _____
(Holder) desires to purchase from Lender _____ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof.

Now, Therefore, the Parties Agree:

1. The principal amount of the loan now outstanding is \$ _____. Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing \$ _____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA or its successor agency under Public Law 103-354 certify to the Holder that the Lender has paid and FmHA or its successor agency under Public Law 103-354 has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. *Loan Servicing.* The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, DC 20503.

their respective interests in the loan, less only Lender's servicing fee.

3. *Servicing Fee.* Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. *Purchase by Holder.* The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the program regulations found in the applicable Subpart of 7 CFR Part 1980 now in effect and future FmHA or its successor agency under Public Law 103-354 program regulations not inconsistent with the provisions hereof.

5. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan attached to or relating to a note which provides for payment of interest on interest is void.

6. *Rights and Liabilities.* The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by FmHA or its successor agency under Public Law 103-354 of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA or its successor agency under Public Law 103-354 for any payment made by FmHA or its successor agency under Public Law 103-354 to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA or its successor agency under Public Law 103-354 1980-70 to effectuate the transfer.

Lender:

Address:

By _____

Title _____

Attest: _____

(SEAL)

Holder:

Address:

By _____

Title _____

Attest: _____

(SEAL)

United States of America

Farmers Home Administration or its successor agency under Public Law 103-354

Address: _____

By _____

Title _____

[54 FR 5, Jan. 3, 1989, as amended at 54 FR 14792, Apr. 13, 1989; 54 FR 26946, June 27, 1989]

APPENDIX J TO SUBPART E OF PART 1980 [RESERVED]

APPENDIX K TO SUBPART E OF PART 1980—REGULATIONS FOR LOAN GUARANTEES FOR DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISES

A. In general

Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans are authorized by Section 401 of the Disaster Assistance Act of 1989, which provides for guarantees of up to 90 percent of the unpaid principal and interest amount of qualifying loans, or \$2,500,000 whichever is less, to any one borrower. DARBE guaranteed loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term "natural disaster(s)" refers only to drought, freeze, storm, excessive moisture, earthquake, and related conditions occurring in 1988 or 1989. All provisions of subparts A and E of part 1980 of this chapter apply to DARBE loans, except as provided in this appendix. All forms used in connection with a DARBE loan will be those used in connection with a Business and Industrial (B&I) guaranteed loan, except for the following three forms that are incorporated in this appendix K of this subpart E, made a part hereof, and appear in the FEDERAL REGISTER following the body of this appendix as exhibits A, B, and C in the following order:

(1) Form FmHA or its successor agency under Public Law 103-354 1980-71, "Lender's Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-35, "Lender's Agreement."

(2) Form FmHA or its successor agency under Public Law 103-354 1980-72, "Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will

RHS, RBS, RUS, FSA, USDA

Pt. 1980, Subpt. E, App. K

be used instead of Form FmHA or its successor agency under Public Law 103-354 449-34, "Loan Note Guarantee."

(3) Form FmHA or its successor agency under Public Law 103-354 1980-73, "Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will be used instead of Form FmHA or its successor agency under Public Law 103-354 449-36, "Assignment Guarantee Agreement."

B. Loan purposes

Loan proceeds may be used for purposes described in §1980.411(a), except in lieu of the debt refinancing requirements in §1980.411(a)(11), the following refinancing requirements apply to DARBE loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. DARBE loan proceeds may be used for hotels, motels, tourist, or recreation facilities which meet the eligibility requirements of DARBE guaranteed loans in addition to the eligible loan purposes as stated in FmHA or its successor agency under Public Law 103-354 Instruction 1980-E. In addition, DARBE loan proceeds may be used for business enterprises engaged in agricultural production (production agriculture) which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fibers or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm and domestic animals. Other eligible uses of loan proceeds under agricultural production include:

(1) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(2) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(3) Loans for livestock and poultry processing as identified under eligible purposes.

(4) The growing of mushrooms or hydroponics.

In addition, those business enterprises which qualify for assistance as agricultural production must be ineligible entities for

FmHA or its successor agency under Public Law 103-354 farmer program loans because the entity exceeds the definition of a family-size farm as defined by FmHA or its successor agency under Public Law 103-354 Instruction 1941-A, §1941.4(d).

C. Ineligible loan purposes

FmHA or its successor agency under Public Law 103-354 Instruction 1980-E, §1980.412 are ineligible purposes for DARBE guaranteed loans except for hotels, motels, tourist, recreation facilities and agricultural production (production agriculture) as defined in §1980.412(e). DARBE guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the DARBE guaranteed loan.

(2) Alleviating financial distress of entities engaged in agricultural production that are eligible for other FmHA or its successor agency under Public Law 103-354-type farm loan programs.

D. Transactions which will not be guaranteed

In addition to transactions listed in FmHA or its successor agency under Public Law 103-354 Instruction 1980-E, §1980.413, except for §1980.413(a)(3), FmHA or its successor agency under Public Law 103-354 will not make DARBE guaranteed loans if the completed application is not received by FmHA or its successor agency under Public Law 103-354 on or before September 30, 1991, nor will FmHA or its successor agency under Public Law 103-354 make subsequent DARBE guarantee loans.

E. Borrower equity requirements

See FmHA or its successor agency under Public Law 103-354 Instruction 1980-E, §1980.441. In lieu of the borrower equity requirements in §1980.441, paragraphs (a) and (b), the following applies to DARBE loans. Tangible balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of §1980.441(c) apply to DARBE guaranteed loans.

F. Filing and processing preapplications and applications

See FmHA or its successor agency under Public Law 103-354 Instruction 1980-E, §1980.451. All requirements of §1980.451 remain in effect. In addition to the information required as part of a preapplication under §1980.451(f), and unless previously submitted as a part of an application under

Pt. 1980, Subpt. E, App. K

7 CFR Ch. XVIII (1-1-09 Edition)

§1980.451(i) evidence is required which demonstrates to FmHA or its successor agency under Public Law 103-354's satisfaction:

(1) The causal relationship between a 1988 or 1989 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be shown that business operations were damaged as a result of such natural disaster.

(3) Evidence of compliance with Sodbuster and Swampbuster requirements as referenced in paragraph K below.

G. Loan guarantee limit. The total principal amount of DARBE guaranteed loans to any one borrower cannot exceed \$10,000,000. The maximum loss covered by Form FmHA or its successor agency under Public Law 103-354 1980-72, "Loan Note Guarantee DARBE," issued on any one borrower can never exceed the percentage of guarantee multiplied by the unpaid principal and accrued interest on the loan as evidenced by the note(s) or by assumption agreement(s), and protective advances, or \$2,500,000, whichever is the lesser amount.

H. Percentage of guarantee. The provisions of FmHA or its successor agency under Public Law 103-354 instruction 1980-E, §1980.420 will not apply to DARBE. For loans in excess of \$2,000,000, the percentage of guarantee will be calculated so that the guaranteed portion of the principal amount of the loan cannot exceed \$2,000,000. For loans of \$2,000,000 or less the maximum percentage of guarantee will be 90 percent. For example, a loan of \$10,000,000 would not exceed a 20 percent guarantee; a \$5,000,000 loan would not exceed a 40 percent guarantee.

I. Lender's existing unguaranteed exposure

The provisions of §1980.452 ADMINISTRATIVE C. 1(d) do not apply.

J. No direct or insured loans

FmHA or its successor agency under Public Law 103-354 Instruction 1980-E, §§1980.423(b), 1980.488(b), 1980.481, 1980.411(b),

and other provisions of this subpart dealing with insured or direct loans do not apply to DARBE loans. All DARBE loans are FmHA or its successor agency under Public Law 103-354 guaranteed loans. FmHA or its successor agency under Public Law 103-354 has no authority to make DARBE loans directly to borrowers.

K. Sodbuster and Swampbuster requirements

The provisions of FmHA or its successor agency under Public Law 103-354 Instruction 1940-G, exhibit M, will apply to loans made to rural business enterprises engaged in agricultural production.

EXHIBIT A TO APPENDIX K

USDA-FmHA or its successor agency under Public Law 103-354

Form FmHA or its successor agency under Public Law 103-354 1980-71

(Rev. 11-89)

FORM APPROVED

OMB NO. 0575-0029

LENDER'S AGREEMENT

DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 TO A HOLDER OR LENDER IS \$2,500,000.

Type of Loan.

Applicable 7 CFR part 1980 subpart

FmHA or its successor agency under Public Law 103-354 Loan Ident. No.

(Lender) of

has made a loan(s) to

(Borrower)

in the principal amount of \$_____ as evidenced by

note(s) (include Bond as appropriate) described as follows:

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) has entered into a "Loan Note Guarantee—DARBE" (Form FmHA or its successor agency under Public Law 103-354 1980-72) or has issued a "Conditional

RHS, RBS, RUS, FSA, USDA

Commitment for Guarantee" (Form FmHA or its successor agency under Public Law 103-354 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Guarantee—DARBE will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

THE MAXIMUM LOSS PAYMENT UNDER A LOAN GUARANTEE UNDER THE DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE GUARANTEED LOAN PROGRAM IS LIMITED TO \$2,500,000, OR THE PERCENTAGE OF GUARANTEE TIMES THE PRINCIPAL, ACCRUED INTEREST, AND APPROVED PROTECTIVE ADVANCES, WHICHEVER IS LESS.

II. FULL FAITH AND CREDIT.

The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee—DARBE or Assignment Guarantee Agreement—DARBE attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee—DARBE will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103-354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103-354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner con-

trary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, D.C. 20503.

III. LENDER'S SALE OR ASSIGNMENT OF GUARANTEE LOAN—DARBE.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA or its successor agency under Public Law 103-354 1980-73, "Assignment Guarantee Agreement—DARBE." Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103-354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103-354 1980-72, "Loan Note Guarantee—DARBE," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public

Law 103-354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103-354 will provide the Lender with a Form FmHA or its successor agency under Public Law 103-354 1980-72, for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA or its successor agency under Public Law 103-354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103-354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103-354 will issue the appropriate Loan Note Guarantees—DARBE to be attached to each of the notes then extant in exchange for the original loan Note Guarantee—DARBE which will be cancelled by FmHA or its successor agency under Public Law 103-354.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 5% for Disaster Assistance for Rural Business Enterprises loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a (Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—DARBE to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—DARBE, and this agreement,

and the FmHA or its successor agency under Public Law 103-354 program regulations found in the applicable subpart of title 7 CFR part 1980, and to future FmHA or its successor agency under Public Law 103-354 program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of title 7 CFR part 1980 and in accordance with the terms of Form FmHA or its successor agency under Public Law 103-354 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution with direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee—DARBE.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103-354 has been or will be signed with the Borrower.

VIII. Lender certifies that it has paid the required guarantee fee.

IX. SERVICING.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval

of FmHA or its successor agency under Public Law 103-354. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103-354's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA or its successor agency under Public Law 103-354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103-354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103-354's written concurrence. For loans covered by 7 CFR part 1980, subpart H, the Holder may designate the payee when an Individual Certificate is issued.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency

under Public Law 103-354; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to \$ _____ without written concurrence of FmHA or its successor agency under Public Law 103-354; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA or its successor agency under Public Law 103-354 at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103-354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103-354.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103-354 regulations.

10. Providing FmHA or its successor agency under Public Law 103-354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103-354 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103-354 office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M.

X. DEFAULT.

A. The Lender will notify FmHA or its successor agency under Public Law 103-354 when

a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103-354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103-354 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA or its successor agency under Public Law 103-354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103-354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).
4. Transfer and assumption of the loan in accordance with the applicable subpart of title 7 CFR part 1980.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA or its successor agency under Public Law 103-354's Lender's, and the Holder(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.
9. Principal and interest write down in accordance with 7 CFR part 1980, subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103-354. The Lender

will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103-354 of its decision. As per the terms of the Loan Note Guarantee—DARBE the maximum loss payment will not exceed \$2,500,000 for principal, interest and approved protective advances.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103-354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA or its successor agency under Public Law 103-354 from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand upon the Lender. Under the Disaster Assistance for Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to \$2,500,000 or the percentage of guarantee multiplied by the principal and accrued interest together with protective advances, whichever is less.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103-354. Such evidence will consist of either the originals of the Loan Note Guarantee—DARBE and note properly endorsed to FmHA or its successor agency under Public Law 103-354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103-354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103-354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103-354, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA or its successor agency under Public Law 103-354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103-354 office

servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103-354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103-354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103-354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103-354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public Law 103-354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103-354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103-354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103-354 arising from said loan or guarantee, nor does such purchase waive any of the FmHA or its successor agency under Public Law 103-354's rights against Lender, and FmHA or its successor agency under Public Law 103-354 will have the right to set-off against Lender all rights insuring to FmHA or its successor agency under Public Law 103-354 from the Holder against FmHA or its successor agency under Public Law 103-354's obligation to Lender under the Loan Note Guarantee—DARBE. To the extent FmHA or its successor agency under Public Law 103-354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to the Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103-354 repurchases from a Holder, FmHA or its successor agency under Public Law 103-354 will pay the Holder only the amounts due the Holder, FmHA or its successor agency under Public Law 103-354 will not reimburse the Lender for servicing fees assessed to a Holder and not col-

lected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103-354 and no such fee is collectible from FmHA or its successor agency under Public Law 103-354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee—DARBE.

XI. LIQUIDATION.

If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103-354. When FmHA or its successor agency under Public Law 103-354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103-354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

If the Lender does not purchase the guaranteed portion of the loan FmHA or its successor agency under Public Law 103-354 will be notified immediately in writing. FmHA or its successor agency under Public Law 103-354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103-354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103-354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103-354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103-354 with:

1. Such proof as FmHA or its successor agency under Public Law 103-354 requires to

establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal DARBE loan balance including accrued interest is less than \$200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On DARBE loan balances in excess of \$200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103-354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103-354 and the Lender.

B. FmHA or its successor agency under Public Law 103-354's response to Lender's liquidation plan. FmHA or its successor agency under Public Law 103-354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA or its successor agency under Public Law 103-354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103-354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103-354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103-354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103-354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103-354 all rights and interest necessary to allow FmHA or its successor agency under Public Law 103-354 to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA or its successor agency under Public Law 103-354.

2. FmHA or its successor agency under Public Law 103-354 will attempt to obtain

the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103-354 include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA or its successor agency under Public Law 103-354, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or its successor agency under Public Law 103-354 or the Lender, as the case may be.

D. Liquidation. Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA or its successor agency under Public Law 103-354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103-354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103-354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103-354 1980-43, "Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103-354." When FmHA or its successor agency under Public Law 103-354 liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103-354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103-354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103-354. Payments will be made in accordance with applicable FmHA or its successor agency under Public Law 103-354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103-354 an estimate of loss that will occur in connection with liquidation of the loan.

FmHA or its successor agency under Public Law 103-354 will agree to pay an estimated loss settlement to the Lender provided the lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA or its successor agency under Public Law 103-354 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA or its successor agency under Public Law 103-354, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA or its successor agency under Public Law 103-354 regulations.

After the Report of Loss estimate has been approved by FmHA or its successor agency under Public Law 103-354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103-354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103-354 449-30 by the Lender to FmHA or its successor agency under Public Law 103-354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103-354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103-354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA or its successor agency under Public Law 103-354 in making the investigation. If FmHA or its successor agency under Public Law 103-354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103-354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA or its successor agency under Public Law 103-354 will send the original to the final Report of Loss to the Fi-

nance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103-354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103-354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103-354 has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee—DARBE.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA or its successor agency under Public Law 103-354 when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA or its successor agency under Public Law 103-354 to the Lender cannot exceed the limits set forth in the Loan Note Guarantee—DARBE. If FmHA or its successor agency under Public Law 103-354 conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA or its successor agency under Public Law 103-354 accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the Loan Note Guarantee—DARBE to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA or its successor agency under Public Law 103-354. The balance of allowable accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA or its successor agency under Public Law 103-354 loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA or its successor agency under Public Law 103-354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. In all cases a final Form FmHA or its successor agency under Public Law 103-354 449-30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103-354 in order to close out the files at the FmHA or its successor agency under Public Law 103-354 Finance Office.

H. Income from collateral. Any net rental or other income that has been received by

the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA or its successor agency under Public Law 103-354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103-354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA or its successor agency under Public Law 103-354 within 60 days after the review of the accounting of the collateral.

XII. PROTECTIVE ADVANCES.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA or its successor agency under Public Law 103-354 written authorization is required on all protective advances in excess of \$500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. ADDITIONAL LOANS OR ADVANCES.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103-354 even though such expenditures or loans will not be guaranteed.

XIV. FUTURE RECOVERY.

After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103-354, any future funds which may be recovered by the Lender, will be pro-rated between FmHA or its successor agency under Public Law 103-354 and the Lender. FmHA or its successor agency

under Public Law 103-354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. TRANSFER AND ASSUMPTION CASES.

Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103-354 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA or its successor agency under Public Law 103-354 449-30, line 13 and 14.

XVI. BANKRUPTCY.

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a chapter 7 bankruptcy or liquidation plan in a chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. Loss Payments.

1. Estimated Loss Payments.

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA or its successor agency under Public Law 103-354, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA or its successor agency

RHS, RBS, RUS, FSA, USDA

Pt. 1980, Subpt. E, App. K

under Public Law 103-354 with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA or its successor agency under Public Law 103-354 449-30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete Form FmHA or its successor agency under Public Law 103-354 1980-44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. Interest Loss Payments.

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA or its successor agency under Public Law 103-354 449-30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee—DARBE or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA or its successor agency under Public Law 103-354 servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA or its successor agency under Public Law 103-354 with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the

reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA or its successor agency under Public Law 103-354 to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103-354 for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA or its successor agency under Public Law 103-354 449-30.

XVII. OTHER REQUIREMENTS.

This agreement is subject to all the requirements of the applicable subpart of title 7 CFR part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103-354 regulations not inconsistent with this agreement.

XVIII. EXECUTION OF AGREEMENTS.

If this agreement is executed prior to the execution of the Loan Note Guarantee—DARBE, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103-354 with respect to the execution of such contract. FmHA or its successor agency under Public Law 103-354 in no way warrants that such a contract has been or will be executed.

XIX. NOTICES.

All notices and actions will be initiated through FmHA or its successor agency under Public Law 103-354 for

(State) with mailing address at the date of this instrument

Dated this _____ day of _____, 19 ____.

LENDER:

Attest:

(Seal)
By _____

Title _____

United States of America
Farmers Home Administration or its successor agency under Public Law 103-354
By _____

Title _____

Pt. 1980, Subpt. E, App. K

7 CFR Ch. XVIII (1-1-09 Edition)

EXHIBIT B TO APPENDIX K

USDA-FmHA or its successor agency under
Public Law 103-354
Form FmHA or its successor agency under
Public Law 103-354 1980-72
(Rev. 11-89)
Type of Loan: _____
Applicable 7 CFR part 1980
Subpart _____

LOAN NOTE GUARANTEE

DISASTER ASSISTANCE FOR RURAL BUSINESS
ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS
SUCCESSOR AGENCY UNDER PUBLIC LAW 103-
354 TO A HOLDER OR LENDER IS \$2,500,000

USDA-FmHA or its successor agency under
Public Law 103-354

From FmHA or its successor agency under
Public Law 103-354 1980-72
(Rev. 11-89)
Type of Loan: _____
Applicable 7 CFR Part 1980
Subpart _____

LOAN NOTE GUARANTEE

DISASTER ASSISTANCE FOR

RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS
SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354

TO A HOLDER OR LENDER IS \$2,500,000

Borrower—

Lender—

Lender's Address

State

County

Date of Note

FmHA or its successor agency under Public
Law 103-354 Loan Identification No.

Principal Amount of Loan \$

—Borrower

Lender

—Lender's Address

—State

County

—Date of Note

—FmHA or its successor agency under Pub-
lic Law 103-354 Loan Identification No.

—Lender's IRS ID Tax No.

—Principal Amount of Loan \$

The guaranteed portion of the loan is
_____ which is _____ (%) per-
cent of loan principal. The principal amount
of loan is evidenced by _____ note(s)
(includes bonds as appropriate) described
below. The guaranteed portion of each note
is indicated below. This instrument is at-
tached to note _____ in the face amount of
\$ _____ and is number _____ of _____.

| Lender's identi- fying Number | Face amount | Percent of total face amount | Amount guaran- teed |
|----------------------------------|----------------|---------------------------------------|------------------------|
| | \$ | % | \$ |
| Total | \$ 100% | 100 | \$ |

In consideration of the making of the sub-
ject loan by the above named Lender, the
United States of America, acting through
the Farmers Home Administration or its
successor agency under Public Law 103-354 of
the United States Department of Agriculture
(herein called "FmHA or its successor agen-
cy under Public Law 103-354"), pursuant to
the Disaster Assistance Act of 1989 does here-
by agree that in accordance with and subject
to the conditions and requirements herein, it
will pay to:

A. Holders:

1. Any loss sustained by the Holder on the
guaranteed portion and interest due on such
portion up to a maximum aggregate amount
of \$2,500,000. On loans with multiple Holders
and/or a Lender who owns part of the guaran-
teed portion, if the aggregate losses exceed
\$2,500,000, each Holder's loss will be prorated
by the percentage of the guaranteed portion
of the loan the holder owns.

B. The Lender the lesser of 1, or 2 below:

1. Any loss sustained by the Lender on the
guaranteed portion including:

a. Principal and interest indebtedness as
evidenced by said note(s) or by assumption
agreement(s), and

b. Principal and interest indebtedness on
secured protective advances for protection
and preservation of collateral made with
FmHA or its successor agency under Public
Law 103-354's authorization, including but
not limited to advances for taxes, annual as-
sessments, any ground rents, and hazard or

RHS, RBS, RUS, FSA, USDA

flood insurance premiums affecting the collateral, but only to the extent that inclusion of such protective advances would not cause the total aggregate loss to exceed \$2,500,000, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due thereon.

But only up to a maximum aggregate amount of \$2,500,000. On loans with single or multiple holders and a Lender who owns part of the guaranteed portion, if the aggregate losses exceed \$2,500,000, the Lender's loss will be prorated by the percentage of the guaranteed portion of the loan the Lender owns.

If FmHA or its successor agency under Public Law 103-354 conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA or its successor agency under Public Law 103-354 accepts responsibility for liquidation will not be covered by this Loan Note Guarantee—DARBE. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee—DARBE to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA or its successor agency under Public Law 103-354.

DEFINITION OF HOLDER.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA or its successor agency under Public Law 103-354 1980-73, "Assignment Guarantee Agreement—DARBE," is used. Loan evidenced by a single note may be assigned only by using Form FmHA or its successor agency under Public Law 103-354 1980-73.

DEFINITION OF LENDER.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart 7 CFR part 1980. The Lender is also the party requesting a loan guarantee.

1. LOAN SERVICING.

Lender will be responsible for servicing the entire loan, and the Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan. When mul-

Pt. 1980, Subpt. E, App. K

multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. PRIORITIES.

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. FULL FAITH AND CREDIT.

The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103-354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103-354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. RIGHTS AND LIABILITIES.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee—DARBE by Lender. Nothing contained herein will constitute any waiver by FmHA or its successor agency under Public Law 103-354 of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA or its successor agency under Public Law 103-354 any payment made by FmHA or its successor agency under Public Law 103-354 to Holder

which if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 would not be required to make.

5. PAYMENTS.

Lender will receive all payments of principal, or interest, and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. PROTECTIVE ADVANCES.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the extent provided in this Loan Note Guarantee—DARBE notwithstanding the guaranteed portion of the loan that is held by another.

7. REPURCHASE BY LENDER.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103-354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103-354 of its decision. As per the terms of this guarantee the maximum loss payment will not exceed \$2,500,000 for principal, interest, and approved protective advances.

8. FmHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 PURCHASE.

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA or its successor agency under Public Law 103-354 will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA or its successor agency under Public Law 103-354

from Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103-354. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or its successor agency under Public Law 103-354 or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA or its successor agency under Public Law 103-354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103-354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or \$2,500,000, whichever is less. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103-354, such proposed payment will not be later than 30 days from the date of demand. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds \$2,500,000, the Holder will be paid on a prorated basis—prorated by the percentage of the guaranteed portion of the loan the Holder owns.

The FmHA or its successor agency under Public Law 103-354 will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103-354 with the information necessary for FmHA or its successor agency under Public Law 103-354 determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103-354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103-354 will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103-354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of the appropriate check. Upon

RHS, RBS, RUS, FSA, USDA

issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. LENDER'S OBLIGATIONS.

Lender consents to the purchase by FmHA or its successor agency under Public Law 103-354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103-354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103-354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103-354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103-354's rights against Lender, and that FmHA or its successor agency under Public Law 103-354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103-354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103-354's obligation to Lender under the Loan Note Guarantee—DARBE.

10. REPURCHASE BY LENDER FOR SERVICING.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA or its successor agency under Public Law 103-354 to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103-354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103-354 at its option may purchase such guaranteed portions for servicing purposes.

11. CUSTODY OF UNGUARANTEED PORTION.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used

Pt. 1980, Subpt. E, App. K

in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. WHEN GUARANTEE TERMINATES.

This Loan Note Guarantee—DARBE will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA or its successor agency under Public Law 103-354 that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA or its successor agency under Public Law 103-354.

13. SETTLEMENT.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. NOTICES.

All notice and actions will be initiated through the FmHA or its successor agency under Public Law 103-354 _____ for _____ (State) with mailing address at the date of this instrument:

United States of America
Farmers Home Administration or its successor agency under Public Law 103-354
By: _____

Title: _____

(Date) _____

Assumption Agreement by _____

dated _____, 19____,

Assumption Agreement by _____

dated _____, 19____.

EXHIBIT C TO APPENDIX K

USDA-FmHA or its successor agency under Public Law 103-354

Form FmHA or its successor agency under Public Law 103-354 1980-73

(Rev. 11-89)

FORM APPROVED

OMB NO. 0575-0029

ASSIGNMENT GUARANTEE AGREEMENT

DISASTER ASSISTANCE FOR RURAL
BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOAN

MAXIMUM LOSS PAYABLE BY FMHA OR
ITS SUCCESSOR AGENCY UNDER PUBLIC LAW
103-354 TO A HOLDER OR LENDER IS
\$2,500,000

Type of Loan:

Applicable 7 CFR Part 1980 Subpart

FmHA or its successor agency under Public
Law 103-354 Loan Identification Number

of
(Lender) has made a loan to

in the principal amount of \$ _____ as
evidenced by a note(s) dated _____. The
United States of America, acting through
Farmers Home Administration or its suc-
cessor agency under Public Law 103-354
(FmHA or its successor agency under Public
Law 103-354) entered into a Loan Note Guar-
antee—Disaster Assistance for Rural Busi-
ness Enterprise Guaranteed Loans (Form
FmHA or its successor agency under Public
Law 103-354 1980-72) with the Lender applica-
ble to such loan to guarantee the loan not to
exceed _____ % of the amount of the prin-
cipal advanced and any interest (including
any loan subsidy) due thereon as provided
therein. Under the Disaster Assistance and
Rural Business Enterprise Guaranteed Loan
program, the maximum cumulative payment
to the holder(s) of the guaranteed portion of
the loan is limited to \$2,500,000 or the per-
centage of guarantee multiplied by the prin-
cipal and interest, whichever is less.

of
(Holder) desires to purchase from Lender
_____ % of the guaranteed portion of such
loan. Copies of Borrower's note(s) and the
Loan Note Guarantee—Disaster Assistance
for Rural Business Enterprises are attached
hereto as a part hereof.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now
outstanding is \$ _____. Lender hereby
assigns to Holder _____ % of the guaran-
teed portion of the loan representing
\$ _____ of such loan now outstanding in
accordance with all of the terms and condi-
tions hereinafter set forth. The Lender and
FmHA or its successor agency under Public
Law 103-354 certify to the Holder that the
Lender has paid and FmHA or its successor
agency under Public Law 103-354 has received
the Guarantee Fee in exchange for the
issuance of the Loan Note Guarantee—Dis-
aster Assistance for Rural Business Enter-
prises.

2. LOAN SERVICING. The Lender will be re-
sponsible for servicing the entire loan and
will remain mortgagee and/or secured party
of record. The entire loan will be secured by
the same security with equal lien priority
for the guaranteed and unguaranteed por-
tions of the loan.

The Lender will receive all payments on
account of principal of, or interest on, the
entire loan and shall promptly remit to the
Holder its pro rata share thereof determined
according to their respective interests in the
loan, less only Lender's servicing fee.

3. SERVICING FEE. Holder agrees that Lend-
er will retain a servicing fee of _____ per-
cent per annum of the unpaid balance of the
guaranteed portion of the loan assigned here-
under.

4. PURCHASE BY HOLDER. The guaranteed
portion purchased by the Holder will always
be a portion of the loan which is guaranteed.
The Holder will hereby succeed to all rights
of the Lender under the Loan Note Guar-
antee—Disaster Assistance for Rural Busi-
ness Enterprises to the extent of the as-
signed portion of the loan. The Lender, how-
ever, will remain bound by all the obliga-
tions under the Loan Note Guarantee—Dis-
aster Assistance for Rural Business Enter-
prises and the program regulations found in
the applicable subpart of 7 CFR part 1980 now
in effect and future FmHA or its successor
agency under Public Law 103-354 program
regulations not inconsistent with the provi-
sions hereof.

*Public reporting burden for this collection of in-
formation is estimated to average 2 hours per re-
sponse, including the time for reviewing instruc-
tions, searching existing data sources, gathering
and maintaining the data needed, and com-
pleting and reviewing the collection of informa-
tion. Send comments regarding this burden esti-
mate or any other aspect of this collection of in-
formation, including suggestions for reducing
this burden, to Department of Agriculture,
Clearance Officer, OIRM, Room 404-W, Wash-
ington, DC 20250; and to the Office of Manage-
ment and Budget, Paperwork Reduction Project
(OMB No. 0575-0029), Washington, DC 20503.*

5. FULL FAITH AND CREDIT. The Loan Note
Guarantee—DARBE constitutes an obliga-
tion supported by the full faith and credit of
the United States and is incontestable ex-
cept for fraud or misrepresentation of which
the Lender or any Holder has actual knowl-
edge at the time of this assignment, or which
the Holder participates in or condones. If the
note to which this is attached or relates pro-
vides for payment of interest on interest,
then this Loan Note Guarantee—DARBE is
void. In addition, the Loan Note Guarantee—
DARBE will be unenforceable by Lender to
the extent any loss is occasioned by the vio-
lation of usury laws, negligent servicing, or
failure to obtain the required security re-
gardless of the time at which FmHA or its

successor agency under Public Law 103-354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103-354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

6. RIGHTS AND LIABILITIES. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee—DARBE by Lender. Nothing contained herein shall constitute any waiver by FmHA or its successor agency under Public Law 103-354 of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA or its successor agency under Public Law 103-354 for any payment made by FmHA or its successor agency under Public Law 103-354 to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103-354 would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA or its successor agency under Public Law 103-354 1980-73 to effectuate the transfer.

7. REPURCHASE BY THE LENDER (DEFAULTS). The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103-354. The Lender will accept an assignment without recourse from the Holder(s) upon repur-

chase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103-354 of its decision. As per the terms of the Loan Note Guarantee—DARBE the maximum loss payment will not exceed \$2,500,000 for principal, interest and approved protective advances.

8. PURCHASE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354. If Lender does not repurchase as provided by paragraph 7, FmHA or its successor agency under Public Law 103-354 will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less Lender's servicing fee, within 30 days after written demand to FmHA or its successor agency under Public Law 103-354 from the Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103-354. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or its successor agency under Public Law 103-354 or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA or its successor agency under Public Law 103-354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103-354 will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or \$2,500,000, whichever is less. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103-354, such proposed payment will not be later than 30 days from the date of demand.

On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds \$2,500,000, the Holder will be paid on a prorated basis—prorated by the percentage of the guaranteed portion of the loan the Holders owns.

The FmHA or its successor agency under Public Law 103-354 will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide the FmHA or its successor agency under

Public Law 103-354 with the information necessary for FmHA or its successor agency under Public Law 103-354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103-354 will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103-354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103-354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. LENDER'S OBLIGATIONS. Lender consents to the purchase by FmHA or its successor agency under Public Law 103-354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103-354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103-354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103-354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103-354's rights against Lender, and that FmHA or its successor agency under Public Law 103-354 shall have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103-354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103-354's obligation to Lender under the Loan Note Guarantee—DARBE.

10. REPURCHASE BY LENDER FOR SERVICING. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA or its successor agency under Public Law 103-354 to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103-354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103-354 at its option may purchase such guaranteed portions for servicing purposes.

11. FORECLOSURE. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. REASSIGNMENT. Holder upon written notice to Lender and FmHA or its successor agency under Public Law 103-354 may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. NOTICES. All notices and actions will be initiated through the FmHA or its successor agency under Public Law 103-354 _____ for _____ (state) with mailing address at the date of this assignment:

Dated this _____ day of _____, 19____.

Lender:

Address: _____

Attest: _____ (Seal)

By _____

Title _____

Holder: _____

Address: _____

Attest: _____ (Seal)

By _____

Title _____

United States of America

Farmers Home Administration or its successor agency under Public Law 103-354

Address: _____

By _____

Title _____

[54 FR 42483, Oct. 17, 1989, as amended at 55 FR 137, Jan. 3, 1990; 55 FR 19245, May 8, 1990]

EXHIBIT G TO SUBPART E OF PART 1980

NOTE: The Exhibit is not published in the Code of Federal Regulations. It is available

RHS, RBS, RUS, FSA, USDA

in any FmHA or its successor agency under
Public Law 103-354 office.

[54 FR 1599, Jan. 13, 1989]

Pt. 1980, Subpt. E, Exh. G

PARTS 1981–1999 [RESERVED]

Subparts F–I [Reserved]